Supreme Court, U. S.
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APPENDIX

Volume I.

IN THE

Supreme Court of the United States

October Term, 1975.

No. 75-904

BRUNSWICK CORPORATION,

Petitioner,

v.

**PUEBLO BOWL-O-MAT, INC.,
BOWL-O-MAT PARAMUS OPERATIONS
and HOLIDAY BOWL-O-MAT, INC.,**

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

**PETITION FOR CERTIORARI FILED DECEMBER 24, 1975.
CERTIORARI GRANTED FEBRUARY 23, 1976.**

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RELEVANT DOCKET ENTRIES IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY.

6-14-66	Complaint filed.
9- 1-66	Answer and Counterclaim filed.
10-24-68	Notice of motion by Counter-Defendant, Daniel Parke Lieblich for summary judgment against Brunswick Corporation on Second amended third count of the counterclaim, and affidavit of service, filed 10-23-68 (ret. 11-12-68) (Brief submitted).
10-24-68	Notice of motion by plaintiffs and counter-defendants, Daniel Parke Lieblich for dismissal of counts one and two of defendant's counterclaim, or in the alternative, for summary judgment on counts one and two, and acknowledgment of service, filed 10-23-68 (ret. 11-12-68) (Brief submitted).
10-24-68	Notice of motion by counter-defendant Reuben Dankoff for dismissal and/or for summary judgment as to second amended third count, first and second counts, and acknowledgment of service, filed 10-23-68 (ret. 11-12-68) (Brief submitted).
1- 9-69	Notice of motion by defendant, Brunswick Corporation for summary judgment of dismissal, and certificate of service, filed 1-8-69 (ret. 1-27-69) (Brief submitted).
4-17-69	Opinion filed 4-15-69. (Wortendyke) (Motion for dismissal as to second and third counts of amended counterclaim denied).
6- 2-69	Order granting defendant's motion for dismissal of count 1; denying motions of counter-

defendants for dismissal or summary judgment as to second and third counts of amended counterclaim, filed 5-29-69 (Wortendyke) Notice mailed.

6-30-69 Opinion, filed 6-27-69 (Wortendyke) (Denying plaintiffs' motions for partial summary judgment and for vacation of protective order; denying defendant-counter claimants' motion for summary judgment).

7-29-69 Order denying motion of defendant, Brunswick Corporation for summary judgment; denying cross-motion of plaintiffs for partial summary judgment, etc., filed (Wortendyke) Notice mailed.

3-12-70 Trial with Jury before Hon. Reynier J. Wortendyke, Jr., (3-10-70) Trial adjourned to a date to be fixed.

4-23-70 Trial continued: (4-21-70) Hearing on application of Brunswick Corporation to amend answer. Ordered application denied. Hearing on motion of plaintiffs to dismiss Count 2 of Counterclaim, or in the alternative, for a directed verdict. Ordered motion granted. Hearing on motion of Ruben Dankoff and Daniel Lieblich for dismissal of Count 3 of counterclaim. Ordered motion granted, Order to be submitted. Hearing on motion of Brunswick Corporation for a directed verdict as to Count 1 of complaint. Ordered motion denied. Trial adjourned to 4-22-70.

5- 4-70 Trial continued (4-29-70).
Disagreement.

5- 4-70 Written Disagreement, filed 4-29-70.

6- 8-70 Order for judgment of dismissal of the first count, second count and the second amended third count of the counterclaim, without costs, filed 6-5-70 (Wortendyke) Notice mailed.

6-29-70 Order denying defendant's post-trial motions; granted to extent for new trial; denying post-trial motions of plaintiffs filed 6-25-70 (Wortendyke) Notice mailed.

3-15-73 Trial moved before Hon. Lawrence A. Whipple with jury. (3-13-73). Trial adjourned to 3-14-73.

4-26-73 Motion by defendant, Brunswick Corporation, for a directed verdict or, in the alternative, to direct a verdict finding separately the issues raised in each of the Counts I, II and III of the complaint, filed 4-25-73. (No brief submitted).

5- 8-73 Defendant's motion for directed verdict or verdicts at the close of all of the evidence, filed 5-4-73.

5- 9-73 Trial continued: (5-7-73).
Ordered motion of defendant for a directed verdict denied.
Ordered motion of plaintiffs for a directed verdict denied.

5-15-73 Trial continued: (5-11-73).
Verdict: In favor of the plaintiffs, Pueblo Bowl-O-Mat, Holiday Bowl-O-Mat, Paramus Bowl-O-Mat. No cause for action as to plaintiffs, Treadway Companies, Inc.,

Paradise Bowl-O-Mat, Inc., Indianapolis Bowl-O-Mat, Inc.

Hearing on application of plaintiffs for immediate imposition of treble damages. Ordered application granted.

5-15-73 Written verdict, filed 5-11-73.

5-31-73 Judgment for $2,894,490 in favor of plaintiff Pueblo Bowl-O-Mat, Inc.; for $896,400.00 in favor of plaintiff Holiday Bowl-O-Mat, Inc.; for $3,283,200.00 in favor of plaintiff Bowl-O-Mat Paramus Operations, and all against defendant Brunswick Corporation; dismissing certain claims, etc.; jurisdiction retained with respect to equitable relief and costs, filed 5-23-73. (Whipple) Notice mailed.

6-11-73 Defendant's motion for judgment notwithstanding the verdicts or, in the alternative, for a new trial, filed 6-8-73.

9-19-73 Opinion, filed 9-17-73 (Whipple) Motion for new trial as to damages granted unless Pueblo Bowl-O-Mat submits to a remittitur (judgment notwithstanding verdict denied).

10- 5-73 Consent of defendant Pueblo Bowl-O-Mat, Inc. to reduce verdict and judgment, filed 10-1-73.

10- 5-73 Order denying motion of Brunswick Corporation for judgment notwithstanding verdicts; denying motion for new trial, etc.; and reducing judgment on behalf of Pueblo Bowl-O-Mat, Inc., filed 10-1-73. (Whipple) Notice mailed.

10- 5-73 Supersedeas Bond with approval of the court thereon, filed 10-2-73.

10- 5-73 Notice of Appeal by defendant, filed 10-2-73.

11-14-73 Record on Appeal sent to U. S. C. A. (Notice mailed).

1- 8-74 Opinion, filed 1-7-74 (Whipple) (Allowing Attorneys' fees and costs).

4- 2-74 Judgment for $446,977.32 for costs and counsel fees in favor of plaintiffs, Pueblo Bowl-O-Mat, Inc., Holiday Bowl-O-Mat, Inc. and Bowl-O-Mat Paramus Operations and against defendant Brunswick Corporation, filed 3-15-74. (Whipple) Notice mailed.

5- 3-74 Notice of Appeal by defendant, filed 5-1-74.

6- 3-74 Supplemental Record on Appeal sent to U. S. C. A. (Notice mailed).

9- 9-74 Opinion from U. S. C. A. dismissing the three appeals, filed.

9-24-74 Supplemental order making judgment entered May 31, 1973 and orders entered October 5, 1973 and April 2, 1974 final; rendering this order nunc pro tunc as to said judgment and orders, etc., filed 9-17-74. (Whipple) Notice mailed.

9-30-74 Supersedeas Bond, filed 9-27-74.

9-30-74 Notice of Appeal by defendant, filed 9-26-74.

10- 3-74 Second Supplemental Record on Appeal sent to U. S. C. A. (Notice mailed).

10-17-74 Third Supplemental Record on Appeal sent to U. S. C. A. (Notice mailed).

12-24-74 Fourth Supplemental Record on Appeal sent to U. S. C. A. (Notice mailed).

1- 9-75 Final Judgment requiring defendant Brunswick Corporation to divest itself of certain bowling centers, denying plaintiffs' application for an injunction prohibiting defendant from building any new bowling centers; granting application of certain plaintiffs for injunction prohibiting defendant from acquiring any existing centers in the Pueblo, Paramus and Poughkeepsie/ Wappingers Falls areas, without costs, filed 1-3-75. (Whipple) Notice mailed.

2-11-75 Notice of Appeal by defendant, filed 2-7-75.

2-13-75 Fifth Supplemental Record on Appeal sent to U. S. C. A. (Notice mailed).

RELEVANT DOCKET ENTRIES IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

Case No. 73-2010.

11-26-73 Copy of Notice of Appeal, rec'd October 9, 1973, filed.
Record and Exhibits, rec'd November 16, 1973, filed.

6-11-74 Argued. Coram: Staley, Gibbons and Weis, Circuit Judges.

8-14-74 Opinion Per Curiam (Staley, *Gibbons* and Weis, Circuit Judges). NOT FOR PUBLICATION, filed (Covers 73-2010, 74-1621 & 74-1622).

9- 5-74 Amended Judgment dismissing the appeals, with taxation of costs to abide the event of any new appeals in this matter, filed. (Covers 73-2010, 74-1621/22).

Case No. 74-2127.

11- 7-74 Copy of Notice of Appeal, rec'd October 2, 1974, filed.

Record, and Exhibits, rec'd May [sic] 16, 1973, filed.

First Supplemental Record, rec'd June 4, 1974, filed.

Second Supplemental Record, rec'd Oct. 4, 1974, filed.

Third Supplemental Record, rec'd Oct. 18, 1974, filed.

11-13-74 Appendix to briefs, previously filed in No. 73-2010, filed (Vols. 1 to 5). (4cc.). (Covers 74-2127 and 74-2128).

11-21-74 Supplemental Appendix, filed. (Covers 74-2127/8).

12-26-74 Fourth Supplemental Record (Nos. 274/278), filed. (Covers 74-2127/8 and 75-1152).

2-15-75 Fifth Supplemental Record (Nos. 279/282), filed. (Covers 74-2127/8 and 75-1152).

2-28-75 Second Supplemental Appendix, filed. (Covers 74-2127/8 and 75-1152).

8-29-75 Opinion of the Court (Staley, *Gibbons* and Weis, C. J.), filed. (Covers 74-2127/8 and 75-1152).

8-29-75 Judgment reversing the judgment of the District Court entered May 31, 1973 and September 24, 1974, which judgment and orders granted damages to the plaintiff-appellees in case No. 74-2127, and the judgment of the District Court entered on January 9, 1975, which judgment granted equitable relief to the plaintiff-appellees in case No. 75-1152; and vacating the order of the District Court entered April 2, 1974, as amended by the Order of the District Court entered September 24, 1974, which orders granted an attorney's fee to the plaintiff-appellants in case No. 74-2128 and remanding the cause to the District Court for further proceedings in accordance with the opinion of this Court, with costs taxed against appellees in cases numbered 74-2127 and 75-1152, filed. (Covers 74-2127/8 & 75-1152).

9-26-75 Order (*Gibbons*, C. J.) staying issuance of the certified judgment in lieu of formal mandate until October 20, 1975, filed. (Covers 74-2127/8 and 75-1152).

10-29-75 Order (*Gibbons*, C. J.) further staying the issuance of the mandate until November 27, 1975, filed. (Covers 74-2127/8 & 75-1152).

12- 8-75 Notice of filing on November 26, 1975 of petition for writ of certiorari, received from Clerk of S. C., filed. (S. C. No. 75-770). (Covers 74-2127/8 & 75-1152).

1- 5-76 Notice of filing on December 24, 1975 of petition for writ of certiorari, rec'd from C. of S. C., filed. (S. C. No. 75-904). (Covers 74-2127/8 & 75-1152).

COMPLAINT.

Plaintiffs, by their attorney, Murray L. Cole, allege:

1. This action is brought under 15 U. S. C. § 15, 1, 2, 18 and 26, including statutes commonly known as the "Clayton Act" and the "Sherman Act", to recover three times the damages resulting from injury to the business and property of the plaintiffs caused by defendant's violations of the antitrust laws, and for injunctive relief against further violations of the Sherman and Clayton Acts by defendant.

2. Plaintiff National Bowl-O-Mat Corporation (hereafter referred to as "Bowl-O-Mat") is a corporation organized under the laws of New Jersey and has its principal place of business in the City of Paterson, County of Passaic, State of New Jersey.

3. Plaintiff Pueblo Bowl-O-Mat, Inc. is a corporation organized under the laws of New Jersey, which owns a bowling center in Pueblo, Colorado, and is wholly owned by Bowl-O-Mat.

4. Plaintiff Bowl-O-Mat Paramus Operations (hereafter referred to as "Paramus Bowl-O-Mat") is a corporation organized under the laws of New Jersey, which owns a bowling center in Paramus, New Jersey, and is wholly owned by Bowl-O-Mat.

5. Plaintiff Holiday Bowl-O-Mat, Inc. is a corporation organized under the laws of New York, which owns a bowling center in Wappingers Falls, New York, and is wholly owned by Bowl-O-Mat.

6. Plaintiff Saginaw Bowl-O-Mat, Inc. is a corporation organized under the laws of New Jersey, which owns

a bowling center in Saginaw, Michigan, and is wholly owned by Bowl-O-Mat.

7. Plaintiff Paradise Bowl-O-Mat, Inc. is a corporation organized under the laws of New Jersey, which owns a bowling center in Puerto Nuevo, a suburb of San Juan, Puerto Rico, and is wholly owned by Bowl-O-Mat.

8. Plaintiff Muncie Bowl-O-Mat, Inc. is a corporation organized under the laws of New Jersey, which owns a bowling center in Muncie, Indiana, and is wholly owned by Bowl-O-Mat.

9. Plaintiff Skore Lanes Bowl-O-Mat, Inc. is a corporation organized under the laws of Michigan, which owns a bowling center in Detroit, Michigan, and is wholly owned by Bowl-O-Mat.

10. Plaintiff Minneapolis Bowl-O-Mat, Inc. is a corporation organized under the laws of New Jersey, which owns a bowling center in Minneapolis, Minnesota, and is wholly owned by Bowl-O-Mat.

11. Plaintiff Des Moines Bowl-O-Mat, Inc. is a corporation organized under the laws of New Jersey, which owns a bowling center in Des Moines, Iowa, and is wholly owned by Bowl-O-Mat.

12. Plaintiff Indianapolis Bowl-O-Mat, Inc. is a corporation organized under the laws of New Jersey, which owns a bowling center in Indianapolis, Indiana, and is wholly owned by Bowl-O-Mat.

13. Defendant Brunswick Corporation (hereafter referred to as "Brunswick") is a corporation organized under the laws of the State of Delaware; it maintains offices and transacts business in the State of New Jersey. The alleged violations hereinafter described have been and are being carried out in part within the State of New Jersey.

14. Definitions

a. A "pinsetter" is a device for positioning the pins for the game of tenpins.

b. A "bowling lane" includes all of the fixed equipment necessary to the game of tenpins except the pinsetters. Fixed equipment includes the wooden cribbing under the lanes, the lane bed, the ball returns, seats, score tables and lockers.

c. A "bowling center" is an establishment which contains multiple bowling lanes, and which may contain billiard tables, a bar, a cocktail lounge, a coffee shop, a restaurant, and a "pro shop" for the sale of bowling balls and other bowling supplies.

d. "Bowling supplies" are balls, pins, ball bags, shoes, socks, shoe bags, and other bowling accessories.

e. A "line" is a complete game of tenpins for one bowler as marked on a score sheet. A line is completed when ten to twenty-two balls are bowled.

f. "League Bowling" is bowling by organized groups, which meet at bowling centers, at regular times, to compete at tenpin bowling.

15. The plaintiffs in this action are located in seven different states and a commonwealth of the United States. Each is wholly owned by plaintiff Bowl-O-Mat, a New Jersey corporation which manages and controls the activities of the subsidiary plaintiff corporations. In the exercise of such management and control Bowl-O-Mat causes its agents regularly to visit each plaintiff corporation. Purchases of supplies for each such plaintiff corporation are regularly made by such corporation from suppliers located in states of the United States different from that in which the plaintiff corporation is located.

There exists a steady and regular flow of equipment, bowling supplies, replacement parts and food and drink products among the states and the commonwealth from such suppliers to such plaintiff corporations. The purchasing and travel activities of the plaintiff corporations constitute a continuous flow of commerce among the several states of the United States and with the Commonwealth of Puerto Rico.

16. The bowling center business consists of: charging a fee for the use of the lanes, with rental generally based on the number of lines bowled; the rental of bowling shoes and balls; it may include, among other things, the operation of a restaurant or coffee shop, the sale of bowling supplies in a "pro shop"; the operation of a cocktail lounge or bar; the maintenance of coin-operated ball cleaning machines and food-vending machines and renting the use of billiard tables.

17. The market from which a bowling center may draw customers is limited by travel time from the customer's home or place of employment to the bowling center. Most league bowling, which is a major source of income for bowling centers, is done at night. Customers generally desire to spend less time traveling to and from bowling centers at night than in the daytime.

18. The market from which Pueblo Bowl-O-Mat draws customers consists of the entire metropolitan area of Pueblo, Colorado.

19. In April 1965, Brunswick acquired and at present owns and operates Belmont Lanes, a bowling center in Pueblo, Colorado, which competes for customers with Pueblo Bowl-O-Mat in the market described in paragraph 18.

20. The market from which Paramus Bowl-O-Mat draws customers consists of Bergen County, New Jersey and an area within a six-mile radius of that center.

21. On March 22, 1965, Brunswick acquired and at present owns and operates "Interstate Lanes," a bowling center in Ramsey, New Jersey, and "Fairlawn Lanes," a bowling center in Fairlawn, New Jersey, which compete for customers with Paramus Bowl-O-Mat in the market described in paragraph 20.

22. The market from which Holiday Bowl-O-Mat draws customers is Wappingers Falls, New York, Poughkeepsie, New York, and communities situated within ten to twenty miles of Wappingers Falls.

23. Sometime in 1965, the exact date being unknown to plaintiffs, Brunswick acquired and at present owns and operates "Dutchess Recreation," a bowling center in Poughkeepsie, New York, which competes for customers with Holiday Bowl-O-Mat in Wappingers Falls, New York, in the market described in paragraph 22.

24. The market from which Saginaw Bowl-O-Mat draws customers consists of Saginaw County, Michigan.

25. The market from which Paradise Bowl-O-Mat draws customers consists of the entire metropolitan area of San Juan, Puerto Rico, extending in a radius at least ten miles from San Juan.

26. The market from which Muncie Bowl-O-Mat draws customers consists of Delaware County, Indiana.

27. The market from which Skore Lanes Bowl-O-Mat draws customers consists of Taylor Township, Michigan, and the surrounding area within a radius of approximately five miles of the township.

28. The market from which Minneapolis Bowl-O-Mat draws customers consists of an area within a radius of approximately eight miles of the bowling center.

29. The market from which Des Moines Bowl-O-Mat draws customers consists of the entire city of Des Moines, Iowa.

30. The market from which Indianapolis Bowl-O-Mat draws customers consists of an area within a radius of approximately eight miles of the bowling center.

31. Bowl-O-Mat formerly owned a bowling center, Ft. Lauderdale Bowl-O-Mat, in Ft. Lauderdale, Florida. This bowling center is now operated by Brunswick. The market from which this bowling center draws customers consists of the entire metropolitan area of Ft. Lauderdale, Florida.

32. At all times relevant hereto, Brunswick was and still is engaged in the business of manufacturing in Ontario, Canada, Michigan, Virginia and other states and the business of selling, installing and servicing automatic pinsetters and bowling lanes from the states of manufacture of such products to all of the states of the United States and the Commonwealth of Puerto Rico. Brunswick sells a complete line of bowling supplies, most of which is manufactured by Brunswick, as well as equipment for the maintenance and furnishing of bowling centers. Brunswick, in addition to the foregoing, at all times relevant hereto was and is engaged in the business of manufacturing billiard tables, balls, cues and other billiard supplies in Canada and the United States and selling such products from the place of manufacture to customers located in all of the states of the United States and the Commonwealth of Puerto Rico.

33. Brunswick is the largest manufacturer in the world of bowling supplies, billiard tables and billiard supplies. Brunswick manufactures almost fifty percent of the automatic pinsetters produced and sold in the United States. American Machine and Foundry, a competitor, manufactures almost fifty percent of the automatic pinsetters produced in the United States.

34. At all times relevant hereto Brunswick was and still is engaged in the business of financing the equipping of bowling centers, including the purchase of pinsetters and lanes, in interstate commerce among the states of the United States and the Commonwealth of Puerto Rico.

35. Brunswick is the fourth largest finance company in the United States.

36. Beginning at a time unknown to plaintiffs, but at least as early as April 21, 1965, Brunswick entered into the business of owning, operating and supplying its own bowling centers in the different states of the United States and the Commonwealth of Puerto Rico.

37. Brunswick is the largest operator of bowling centers in the United States.

38. As of December 31, 1965, Brunswick operated one hundred thirty-four bowling centers located in at least twenty-nine states of the United States and the Commonwealth of Puerto Rico, and at the time of the filing of this complaint has acquired and operates other bowling centers, the exact number of which is not known to plaintiffs.

As and for a First Claim.

39. Brunswick has entered into "Fair-Trade" contracts with bowling centers owned and operated by Bowl-O-Mat in New Jersey and Colorado.

Such contracts establish and maintain the minimum resale price of bowling supplies, including bowling balls.

40. Bowling supplies covered by the aforesaid "Fair Trade" contracts are sold by Brunswick and shipped from plants in Michigan and Canada to Bowl-O-Mat owned centers in New Jersey and Colorado.

41. Beginning at a time not known to plaintiffs and continuing to the date of filing of this complaint, in the markets described in paragraphs 18 and 20, bowling centers owned and operated by Brunswick have advertised and sold bowling supplies, sold to said centers by Brunswick, in competition with Paramus Bowl-O-Mat, Paramus, New Jersey, and Pueblo Bowl-O-Mat, Pueblo, Colorado, respectively.

42. The "Fair Trade" contracts described in paragraph 39 are contracts between competitors to establish and maintain resale prices and hence constitute contracts in unreasonable restraint of trade and commerce among the several states in violation of Section 1 of the Sherman Act.

As and for a Second Claim.

43. In June 1964, each of the Bowl-O-Mat bowling centers described in paragraphs 4, 6, 7, 8, 9, 10, 11 and 12 was indebted to Brunswick for pinsetters and lanes sold to it by Brunswick.

44. Because of poor business conditions in the bowling industry which existed in 1964 and persist at the date of the filing of this complaint, most bowling centers, including the Bowl-O-Mat bowling centers referred to in paragraph 43 have had great difficulty in meeting payments to Brunswick under the terms of the original finance agreements.

45. In June 1964, Bowl-O-Mat negotiated for extensions of dates and reductions in amounts of payments of its indebtedness to Brunswick for several of Bowl-O-Mat's bowling centers then indebted to Brunswick, including the Bowl-O-Mat bowling centers referred to in paragraph 43. Officers of Brunswick demanded as a condition for the extensions an additional interest charge at the rate of four and one-half percent per year for the duration of the debts and the guarantee of Bowl-O-Mat as the parent of the debtors. Bowl-O-Mat acceded to these conditions only on condition that all customers indebted to Brunswick would be treated identically by Brunswick, and on Brunswick's assurance that all finance agreements would be enforced to the letter against all debtors of Brunswick.

46. Beginning at a time unknown to plaintiffs, but before the mentioned agreement was made, and continuing to March 28, 1966, Brunswick systematically discriminated against the Bowl-O-Mat bowling centers referred to in paragraph 43 by granting forebearances of debt or discriminatory favorable credit terms to bowling centers indebted to Brunswick and engaged in competition with the Bowl-O-Mat bowling centers above-named and refusing to grant like forebearances and like credit terms to the Bowl-O-Mat centers.

47. In the bowling markets referred to in paragraph 43, above, there existed two or more bowling centers purchasing automatic pinsetting equipment from Brunswick including bowling centers owned by Bowl-O-Mat. At all times mentioned herein, the demand for bowling centers was insufficient to maintain two or more centers at profit-making levels. In such markets, Brunswick supported certain favored bowling centers through discriminatory forebearance against payment on large indebtedness or by extending to such favored bowling centers favorable credit

terms. Without such support by Brunswick, such favored bowling centers would have failed. Brunswick extended such support in order to injure the competition of bowling centers owned by Bowl-O-Mat. Brunswick planned to cause Bowl-O-Mat owned bowling centers to default on their obligations to Brunswick, as part of a plan or purpose to assume the operation of such defaulted bowling centers, thereby monopolizing markets in which such Bowl-O-Mat centers were found.

48. In 1964, Bowl-O-Mat resolved to sell its Ft. Lauderdale Bowl-O-Mat bowling center in Ft. Lauderdale, Florida due to losses sustained by reason of the competition of Imperial Bowl, a bowling center located in Dania, Florida, which had been granted more favorable treatment on its debt owing to Brunswick than had been made available by Brunswick to Ft. Lauderdale Bowl-O-Mat.

49. Brunswick had sold automatic pinsetting equipment and bowling lanes to Ft. Lauderdale Bowl-O-Mat at a price of approximately $600,000 pursuant to a conditional sales agreement. That agreement required the consent in writing of Brunswick for any sale or transfer of the assets of Ft. Lauderdale Bowl-O-Mat to third persons. On November 27, 1964, just three days before an agreed-upon sale of Ft. Lauderdale's assets was to have been consummated, Brunswick, although requested to do so pursuant to the terms of the agreement, unreasonably withheld its consent to a sale to a responsible third party.

50. As a result of Brunswick disapproval of the sale of the Ft. Lauderdale Bowl-O-Mat, Bowl-O-Mat abandoned the property to its landlord. Soon thereafter, Brunswick acquired the bowling center from said landlord and at the time of filing of this complaint, Brunswick owns and operates the center. Within a few weeks after the acquisi-

tion of Ft. Lauderdale Bowl-O-Mat, Brunswick acquired Imperial Bowl in Dania, Florida, and owns and operates the same at the time of filing of this complaint.

51. The purpose and intent of Brunswick's unreasonable refusal to approve the proposed sale of Ft. Lauderdale Bowl-O-Mat was to cause Ft. Lauderdale Bowl-O-Mat to cease doing business, and to enable Brunswick to acquire the bowling center and thereby to monopolize the market in the Ft. Lauderdale area.

52. Brunswick charges low rentals and offers many inducements to bowlers which other operators of bowling centers, who lack the large financial resources of Brunswick, cannot afford to charge or offer for as long a period of time as Brunswick can. Brunswick does so with the purpose and effect of weakening and excluding competition in the markets in which it operates bowling centers.

53. Brunswick absorbs losses in its operation of bowling centers which could not be absorbed by operators who lack the large financial resources of Brunswick, and does not close such centers, with the purpose and effect of weakening and excluding competition in the markets in which it operates bowling centers.

54. Because of its integrated manufacturing and bowling center operating functions, Brunswick is able to and does install the most modern equipment at its bowling centers, including Brunswick "Model A-2" (hereinafter called "A-2") automatic pinsetters, which competitors of Brunswick bowling centers are, for the most part, unable to afford.

55. A-2's are more efficient than other automatic pinsetters, and reduce the time necessary to complete a game of tenpins. As a result, bowling centers equipped with

A-2's attract more bowlers than bowling centers without A-2's.

56. Brunswick has installed A-2's at its bowling center in Fairlawn, New Jersey.

57. Brunswick has announced its intention to install A-2's at its bowling centers in Pueblo, Colorado and Poughkeepsie, New York.

58. The bowling centers owned by plaintiffs Paramus Bowl-O-Mat, Pueblo Bowl-O-Mat, and Holiday Bowl-O-Mat, respectively, are not equipped with A-2's, and as a result, Paramus Bowl-O-Mat has lost, and Holiday Bowl-O-Mat and Pueblo Bowl-O-Mat will lose business to the Brunswick centers described in paragraphs 56 and 57 above.

59. Because Brunswick has been a creditor of Paramus Bowl-O-Mat and Pueblo Bowl-O-Mat, it was able to obtain confidential information through exercise of its contract rights to inspect its debtors' books and to use such information in order to compete as an operator of bowling centers with plaintiffs Paramus Bowl-O-Mat and Pueblo Bowl-O-Mat.

60. Because bowling centers owned and operated by Brunswick are indebted to Brunswick for their lanes and pinsetters, those bowling centers can and do obtain forgiveness, refinancing and forebearances of debt from Brunswick, important commercial advantages unavailable to competitors of those centers.

61. Repeat and reallege the allegations contained in paragraphs 39, 40 and 41.

62. As a result of the above-mentioned acts and practices of Brunswick, Brunswick has achieved, maintains and

exercises power to fix and control prices charged for the use of bowling lanes in each of the markets or parts of commerce described in paragraphs 18, 20, 22 and 31 above, and has achieved, maintains and exercises the power and ability to exclude competitors from said markets or parts of commerce in unlawful monopolization of said markets in violation of § 2 of the Sherman Act.

63. By means of the acts and practices of Brunswick set forth in paragraphs 39, 40, 41, 46, 47, 49, 50, 52, 53, 54, 56, 57, and 59 above, Brunswick has attempted to monopolize each of the markets or parts of commerce described in paragraphs 24 through 30 in violations of § 2 of the Sherman Act.

As and for a Third Claim.

64. Repeat and reallege the allegations contained in paragraphs 52 through 59.

65. Belmont Lanes is a bowling center located in Pueblo, Colorado, as alleged in paragraph 19 above, and was a part of the assets of National Bowlers Corporation, a corporation engaged in interstate commerce. In April 1965, Brunswick acquired all the assets of Belmont Lanes.

66. Interstate Lanes and Fairlawn Lanes are bowling centers located in Ramsey, New Jersey and Fairlawn, New Jersey, as alleged in paragraph 21 above, and constituted part of the assets of the American International Bowling Corporation, a corporation engaged in interstate commerce. On March 22, 1965, Brunswick acquired the assets of Interstate Lanes and Fairlawn Lanes.

67. "Dutchess Recreation," a bowling center in Poughkeepsie, New York, as alleged in paragraph 23 above, was a part of the assets of Lence Lanes Corporation, a corporation engaged in interstate commerce. Sometime during 1965, Brunswick acquired all the assets of Dutchess Recreation.

68. The effects of Brunswick's acquisitions of the above-named bowling centers is and has been substantially to lessen competition or tend to create a monopoly in the markets and sections of the country described in paragraphs 18, 20 and 22 above, all in violation of Section 7 of the Clayton Act.

Damages.

69. As the proximate result of the aforesaid acts and practices of Brunswick, plaintiffs have been injured in their business and property, among other ways, as follows:

(a) Plaintiffs have suffered a loss in profit in the resale of bowling supplies sold to them by Brunswick under fair trade contracts.

(b) Plaintiffs have suffered loss of business and the expectable profits of businesses to Brunswick-owned bowling centers and to other competitors of Bowl-O-Mat as a result of Brunswick's monopolistic practices.

(c) Bowl-O-Mat has lost its entire investment in Ft. Lauderdale Bowl-O-Mat as a result of Brunswick's monopolistic practices.

(d) Plaintiffs have incurred arbitrary and unreasonable interest rates on debts owed to Brunswick and have been compelled to accept terms of financing less favorable than afforded Bowl-O-Mat's competitors by Brunswick, suffering a loss of capital and of rental for the use of lanes because of high prices necessarily charged in order to pay for the discriminatorily high

interest rates and unfavorable credit terms afforded Bowl-O-Mat.

70. Plaintiffs are threatened with further loss and damage as a proximate result of Brunswick's continuing violations of the antitrust laws, and have no adequate remedy at law.

71. Plaintiffs have been injured in their business and property by the violations of the antitrust laws engaged in by defendant. The full extent of damages suffered by plaintiffs as a result of defendant's violations of the antitrust laws is presently unknown to plaintiffs.

Plaintiffs request a trial at which may be determined, along with all other proper measures of damages: the reasonably expectable profits to be made from the operation of their bowling centers at Paramus, New Jersey, Wappingers Falls, New York, Pueblo, Colorado, San Juan, Puerto Rico, Saginaw, Michigan, Muncie, Indiana, Detroit, Michigan, Minneapolis, Minnesota, Des Moines, Iowa and Indianapolis, Indiana; the value of Ft. Lauderdale Bowl-O-Mat; and the reasonably expectable profits which would be made from the operation of Ft. Lauderdale Bowl-O-Mat; the reasonably expectable profits to be made from the sale of bowling supplies free from fair traded prices; the cost of excessive interest rates and payment terms.

72. During the pendency of this action, further damages will accrue to plaintiffs as a result of the wrongful conduct of defendants, as herein detailed, and additional injuries not yet known to plaintiffs may have been incurred at the time of this complaint, and plaintiffs ask leave of the Court to amend its complaint at the trial hereof to the extent necessary to show such additional damages accruing prior to the close of trial of this action.

WHEREFORE, the plaintiffs pray:

For relief under the first claim:

a. That the Court adjudge and decree that defendant has entered into "Fair Trade" contracts in unreasonable restraint of trade and commerce among the several states in violation of Section 1 of the Sherman Act, that the aforesaid contracts are illegal, and that said contracts be ordered to be cancelled and terminated.

b. That the Court issue an injunction restraining perpetually the defendant, its successors, assignees, officers, directors, agents, employees and persons acting for or in its behalf from enforcing similar contracts in unreasonable restraint of trade in the states of New Jersey and Colorado.

c. That the plaintiffs have such other further and different relief which to the Court may seem necessary and appropriate.

d. That the Court grant judgment for plaintiffs against defendant for threefold the amount of damages as shall be set by the jury, together with reasonable attorney's fees and all costs and disbursements of this action.

For relief under the second claim:

a. That the Court adjudge and decree that defendant has attempted to monopolize and has monopolized the bowling center business, in the particular markets as defined by this complaint and constituting parts of the trade and commerce among the several states in violation of Section 2 of the Sherman Act.

b. That the Court issue an injunction restraining perpetually the defendant, its successors, assignees, officers, directors, agents, employees and persons acting for or in its behalf from continuing to monopolize and from attempting to monopolize the particular markets as defined by this complaint and constituting part of the trade and commerce among the several states in the states of New York, New Jersey, Colorado, Michigan, Florida, Indiana, Minnesota, Iowa and the Commonwealth of Puerto Rico as hereinbefore described and from acquiring bowling centers which are engaged in competition with plaintiff in the above-described markets in Paramus, New Jersey, Poughkeepsie, New York, San Juan, Puerto Rico, Pueblo, Colorado, Saginaw, Michigan, Muncie, Indiana, Detroit, Michigan, Minneapolis Minnesota, Des Moines, Iowa and Indianapolis, Indiana.

c. That the Court order that defendant be required to divest itself of "Belmont Lanes," Pueblo, Colorado, "Interstate Lanes," Ramsey, New Jersey, "Fairlawn Lanes," Fairlawn, New Jersey and "Dutchess Recreation" in Poughkeepsie, New York, as soon after the final decision in this Court is entered as this Court deems reasonable.

d. That the plaintiffs have such other further and different relief which to the Court may seem necessary and appropriate.

e. That the Court grant judgment for plaintiffs against defendant for threefold the amount of damages as shall be set by the jury, together with reasonable attorney's fees and all costs and disbursements of this action.

For relief under the third claim:

a. That the Court adjudge and decree that defendant has acquired part of the assets of corporations engaged in interstate commerce and that the effect of such acquisitions is substantially to lessen competition and tends to create a monopoly in certain sections of the country, in violation of Section 7 of the Clayton Act.

b. That the court issue an injunction restraining perpetually the defendant, its successors, assignees, officers, directors, agents, employees and persons acting for or in its behalf from acquiring bowling centers which are engaged in competition with plaintiffs in the above-described markets in Paramus, New Jersey, Poughkeepsie, New York, San Juan, Puerto Rico, Pueblo, Colorado, Saginaw, Michigan, Muncie, Indiana, Detroit, Michigan, Minneapolis, Minnesota, Des Moines, Iowa and Indianapolis, Indiana.

c. That the Court order that defendant be required to divest itself of "Belmont Lanes," Pueblo, Colorado, "Interstate Lanes," Ramsey, New Jersey, "Fairlawn Lanes," Fairlawn, New Jersey and "Dutchess Recreation" in Poughkeepsie, New York, as soon after the final decision in this Court is entered as this Court deems reasonable.

d. That plaintiffs have such other further and different relief which to the Court may seem necessary and appropriate.

e. That the Court grant judgment for plaintiffs against defendant for threefold the amount of damages as shall be set by the jury, together with reasonable

attorney's fees and all costs and disbursements of this action.

Dated: Paterson, New Jersey

June 13, 1966

LIEBLICH & COLE,
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Murray L. Cole,
152 Market Street,
Paterson, New Jersey

Attorney for Plaintiffs,
National Bowl-O-Mat Corporation, Pueblo Bowl-O-Mat, Inc., Bowl-O-Mat Paramus Operations, Holiday Bowl-O-Mat, Inc., Saginaw Bowl-O-Mat, Inc., Paradise Bowl-O-Mat, Inc., Muncie Bowl-O-Mat, Inc., Skore Lanes Bowl-O-Mat, Inc., Minneapolis Bowl-O-Mat, Inc., Des Moines Bowl-O-Mat, Inc., and Indianapolis Bowl-O-Mat, Inc.

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New York, N. Y. 10017

Of Counsel to Plaintiffs.

ANSWER AND COUNTERCLAIM.

Defendant, Brunswick Corporation, a corporation of the State of Delaware, having its principal office at 69 West Washington Street, Chicago, Illinois, answering the Complaint filed herein, says:

1. Defendant admits that the plaintiffs seek to maintain this action under the various statutes cited in paragraph 1 of the Complaint, but denies that the plaintiffs have alleged or that they have any right to relief against the defendant under said statutes or any of them.

2-12, Inclusive. On information and belief, defendant admits the allegations of paragraphs 2-12, inclusive, of the Complaint.

13. Defendant admits the allegations in the first sentence of paragraph 13 of the Complaint, but denies that it has carried out or is carrying out the alleged violations referred to in the second sentence thereof, or any part thereof, within the State of New Jersey or elsewhere.

14. Defendant accepts for the purposes of this case the definitions alleged in paragraph 14 of the Complaint, except that it alleges that a "line" of tenpins is completed when 11 to 21 balls have been bowled and that the term "league bowling" commonly is applied only to organized groups which bowl at specified intervals pursuant to seasonal contracts entered into between such groups and the operators of bowling centers.

15. Answering paragraph 15 of the Complaint, defendant admits on information and belief the allegations in the first sentence thereof and, further answering, alleges that it has no knowledge or information sufficient to form a belief as to whether plaintiff NATIONAL BOWL-O-MAT CORPORATION causes its agents regularly to visit the other

plaintiffs. It admits that there is a regular flow of bowling equipment, bowling supplies, replacement parts and food and drink products among the several states and the Commonwealth of Puerto Rico from suppliers thereof to operators of bowling centers and that from time to time the plaintiffs named in paragraphs 3-12, inclusive, of the Complaint have purchased certain of such items from defendant, but it is without knowledge or information sufficient to form a belief as to the nature and extent of any purchasing by said plaintiffs from suppliers other than defendant.

16. Defendant admits that the allegations of paragraph 16 of the Complaint constitute a general description of the bowling center business, but allege that such business does not always include all of the activities alleged therein and may include activities not alleged therein.

17. Answering paragraph 17 of the Complaint, defendant admits that travel time from the customer's home or place of employment to the bowling center is one of the factors which determine the market from which a bowling center may draw customers, but denies it is the only factor therein and alleges that among additional factors which may determine such market are the size, appointments and manner of operation of the bowling center, the character of the community in which it is located and the location, size, appointments and manner of operation of other bowling centers so situated as to offer alternative bowling facilities to substantial numbers of possible or potential customers and that the effective market area of a bowling center may change from time to time in response to changes in one or more of such factors. Defendant admits that league bowling is a major source of income for bowling centers and that, in general, much league bowling is done at night, but alleges that there is significant variation

between bowling centers with respect to these matters. Defendant has no knowledge or information sufficient to form a belief as to whether customers of bowling centers generally desire to spend less time traveling to and from bowling centers at night than in the daytime.

18. Defendant denies the allegations of paragraph 18 of the Complaint.

19. Answering paragraph 19 of the Complaint, defendant denies that it acquired, or that it owns, BELMONT LANES, a bowling center in Pueblo, Colorado, but admits that it operates such bowling center and owns certain equipment and supplies used in said operation. Further answering, defendant alleges that it sold pinsetters, bowling lanes and related equipment to National Bowlers Corporation, a former operator of such bowling center, pursuant to conditional sale agreements between defendant and said former operator which provided that the purchase price of such equipment was to be paid in installments over a period of years and further provided that in the event of default in the payment of said installments defendant would have the right to repossess same, among other rights; that on March 2, 1965, defendant entered into an agreement with National Bowlers Corporation that by reason of the latter's defaults in making payments under such conditional sale agreements defendant would repossess said equipment and said former operator would turn over to defendant certain other equipment and supplies located in said center; that defendant thereupon determined that its only reasonable prospect of offsetting all or any substantial part of its losses by reason of such defaults was to operate its equipment in place until such time as its equipment and its operation of such bowling center could be sold as a going business to a responsible operator on reasonable terms and that, accordingly, defendant

entered into possession of the premises of said bowling center pursuant to a lease entered into on April 19, 1965 between it and the owner of such premises. Defendant denies that said BELMONT LANES competes for customers to any substantial extent with plaintiff PUEBLO BOWL-O-MAT.

20. Defendant denies the allegation of paragraph 20 of the Complaint.

21. Answering paragraph 21 of the Complaint, defendant admits that it acquired and owns the stock of two corporations which operate, respectively, INTERSTATE LANES, a bowling center in Ramsey, New Jersey, and FAIRLAWN LANES, a bowling center in Fairlawn, New Jersey, and otherwise denies the allegations of said paragraph. Further answering, defendant alleges that it sold pinsetters, bowling lanes and related equipment to said two corporations pursuant to conditional sale agreements between defendant and each of said two corporations which provided that the purchase price of such equipment was to be paid in installments over a period of years, and further provided that, in the event of default in the payment of said installments, defendant would have the right to repossess same, among other rights; that at the time of such sales one such corporation was a wholly-owned subsidiary of AMERICAN INTERNATIONAL BOWLING CORPORATION and the other such corporation subsequently became a subsidiary of AMERICAN INTERNATIONAL BOWLING CORPORATION; that said AMERICAN INTERNATIONAL BOWLING CORPORATION guaranteed payment on said conditional sale agreements; that prior to March 26, 1965, said AMERICAN INTERNATIONAL BOWLING CORPORATION was adjudged a bankrupt and each of said two subsidiary corporations which operated the said bowling centers was a failing corporation, was insolvent and had defaulted in the making of payments due under its conditional sale agreements with defendant; that defendant thereupon determined that its only reasonable prospect of offsetting all or any substantial part of its losses by reason of the foregoing defaults was to operate the equipment sold under said conditional sale agreements in place until such time as its equipment and its operation of each of such bowling centers could be sold as a going business at a fair price to a responsible operator and that, accordingly, on March 26, 1965, defendant purchased for cash, at public sale held at the District Court of the District of New Jersey, from the Trustee in Bankruptcy for said AMERICAN INTERNATIONAL BOWLING CORPORATION, all of the capital stock of said two operating corporations.

22. Defendant denies the allegations of paragraph 22 of the Complaint.

23. Answering paragraph 23 of the Complaint, defendant denies that it acquired or that it owns DUTCHESS RECREATION, a bowling center in Poughkeepsie, New York, but admits that it operates a bowling center in that city known as DUTCHESS LANES and that it owns certain equipment and supplies used in the operation thereof. Further answering, defendant alleges that it sold pinsetters, bowling lanes and related equipment to LENCE POUGHKEEPSIE LANES, INC., a former operator of said bowling center, under conditional sale agreements which called for payment of the purchase price over a period of years and further provided that, in the event of default in the payment of such installments, defendant would have the right to repossess such pinsetters, lanes and equipment, among other rights; that LENCE POUGHKEEPSIE LANES, INC. defaulted in the making of such payments and that de-

fendant, pursuant to its rights under said conditional sale agreements, repossessed such pinsetters, lanes and equipment on or about April 5, 1963; that on or about May 13, 1963, defendant resold such equipment to LEMAR, INC., a corporation formed by the landlord of such premises, for a purchase price which subsequently was secured by a chattel mortgage; that said LEMAR, INC. defaulted in the payment of such purchase price and that on or about December 10, 1965, defendant repossessed such equipment again pursuant to the terms of said chattel mortgage; that defendant thereupon determined that its only reasonable prospect of offsetting all or any substantial part of the losses which it suffered by reason of such defaults was to operate its pinsetters, lanes and equipment in place until such time as its equipment and its operation of such bowling center could be sold as a going business for a fair price to a responsible operator and that accordingly defendant entered into possession of the premises of said bowling center pursuant to a lease thereof, and of certain personal property located therein, by the owner of such premises, and at the same time defendant purchased from LEMAR, INC. certain liquor and food supplies and ball boring equipment located on such premises. Defendant denies that DUTCHESS LANES competes for customers to any substantial extent with plaintiff HOLIDAY BOWL-O-MAT.

24 through 30, Inclusive. Defendant has no knowledge sufficient to form a belief as to whether the respective markets from which the plaintiffs' bowling centers named in paragraphs 24 through 30, inclusive, of the Complaint draw customers, are in fact the areas alleged in said paragraphs, and defendant alleges that in any event it does not operate any bowling center which competes for customers with any of such plaintiffs' bowling centers.

31. Answering paragraph 31 of the Complaint, defendant has no knowledge or information sufficient to form a belief as to whether plaintiff NATIONAL BOWL-O-MAT CORPORATION formerly owned the bowling center known as FORT LAUDERDALE BOWL-O-MAT in Fort Lauderdale, Florida, and alleges that the former purported operator of such bowling center was a corporation known as FORT LAUDERDALE BOWL-O-MAT, INC. It admits that such bowling center is now operated by defendant under the name of LAUDERDALE LANES. Further answering, defendant alleges that it sold pinsetters, bowling lanes and related equipment to an operator of said bowling center which preceded FORT LAUDERDALE BOWL-O-MAT, INC., pursuant to conditional sale agreements between defendant and said operator which provided that the purchase price of such equipment was to be paid in installments over a period of years and further provided that in the event of default in the payment of said installments defendant would have the right to repossess same, among other rights; that subsequently FORT LAUDERDALE BOWL-O-MAT, INC., as the purported successor operator of said bowling center, assumed the obligations of the purchaser under said conditional sale agreements, as then modified by certain extension agreements; that said FORT LAUDERDALE BOWL-O-MAT, INC. defaulted in the making of said payments; that from early in 1964 until October of that year, defendant attempted to negotiate with NATIONAL BOWL-O-MAT CORPORATION a rescheduling of the indebtedness of FORT LAUDERDALE BOWL-O-MAT, INC. under which defendant would receive some payment on the amounts due it, but that such negotiations fell through and in October, 1964, defendant concluded that it would have to take legal action to repossess its equipment and so advised NATIONAL BOWL-O-MAT CORPORATION; that on or about November 6, 1964,

NATIONAL BOWL-O-MAT CORPORATION advised defendant that it had entered into an agreement to sell the Fort Lauderdale center to a third party; that between November 6, 1964 and January 15, 1965, defendant agreed in principle to several proposals under which it would consent to a transfer of title to said equipment to the proposed purchaser and actually signed a transfer of equity documents with respect to the last of such proposals and placed them in the hands of attorneys for both NATIONAL BOWL-O-MAT CORPORATION and the proposed purchaser, but that on January 19, 1965, the proposed purchaser informed the defendant that he was no longer interested in purchasing the center because the landlord of the premises was on the point of evicting FORT LAUDERDALE BOWL-O-MAT, INC. for non-payment of rent; that shortly thereafter FORT LAUDERDALE BOWL-O-MAT, INC. vacated the premises as the result, defendant is informed and believes, of having been evicted, and abandoned therein the pinsetters, lanes and other equipment purchased from defendant; that defendant, pursuant to its rights under its conditional sale agreements, subsequently repossessed such equipment; that defendant thereupon determined that its only reasonable prospect of recovering all or any substantial part of the losses which it sustained by reason of such default was to operate such pinsetters, lanes and equipment in place until such time as its equipment and the operation of such bowling center could be sold as a going business for a fair price to a responsible operator and that, accordingly, defendant entered into possession of the premises pursuant to a lease to it from the owner thereof. Defendant denies that the market from which such bowling center draws customers consists of the entire metropolitan area of Fort Lauderdale, Florida.

32. Defendant admits the allegations of paragraph 32 of the Complaint, except it denies that it was or is manufacturing in Canada, or selling, installing or servicing, in the United States or Puerto Rico, pinsetters or bowling lanes manufactured in Canada.

33. Defendant has no knowledge or information sufficient to form a belief as to whether it is the largest manufacturer in the world of bowling supplies, billiard tables and billiard supplies, or as to whether it manufactures almost 50% of the automatic pin positioning machines produced and sold in the United States, or as to whether American Machine & Foundry manufactures almost 50% thereof, but defendant admits that it is one of the largest manufacturers of such items and that American Machine & Foundry is its largest competitor therein.

34. Defendant denies that it was or that it is engaged in the business of financing the equipping of bowling centers, including the purchase of pinsetters and lanes, as alleged in paragraph 34 of the Complaint, but admits that in connection with and in furtherance of its business of manufacturing and selling pinsetters, bowling lanes and allied equipment it has sold large amounts thereof on installment payment terms under conditional sale agreements or chattel mortgages entered into between it and the purchasers thereof.

35. Defendant denies that it is a finance company as alleged in paragraph 35 of the Complaint.

36. Answering paragraph 36 of the Complaint, defendant admits that to a limited extent it has entered into the business of leasing and operating bowling centers containing repossessed equipment sold by it to previous operators of such centers, as a means of attempting to offset losses which it has suffered by reason of the defaults of

such purchasers under conditional sale agreements or chattel mortgages, with the intention at all times that when possible it would sell its equipment and its operation of each such center as a going business to a responsible purchaser.

37. On information and belief, defendant admits the allegations of paragraph 37 of the Complaint.

38. Defendant admits the allegations of paragraph 38 of the Complaint, except that as of December 31, 1965 the number of bowling centers which it was operating, as aforesaid, was 131, located in 33 states but not in Puerto Rico.

39. Answering paragraph 39 of the Complaint, defendant admits that it has entered into "Fair Trade" contracts with the plaintiffs PUEBLO BOWL-O-MAT, INC. and BOWL-O-MAT PARAMUS OPERATIONS, and admits that such contracts established minimum resale prices for certain specified trademarked bowling supplies, comprising bowling balls, bags and shoes.

40. Answering paragraph 40 of the Complaint, defendant admits that it has sold bowling supplies covered by "Fair Trade" contracts to Bowl-O-Mat owned centers in New Jersey and Colorado, but further alleges that such sales have been *de minimis* since prior to the respective dates on which defendant commenced the operation of its bowling centers in Pueblo, Colorado and in Ramsey and Fairlawn, New Jersey, and that the plaintiffs' PUEBLO BOWL-O-MAT, INC. and BOWL-O-MAT PARAMUS OPERATIONS virtually ceased to be customers of or dealers for defendant after said dates.

41. Answering paragraph 41 of the Complaint, defendant admits that bowling centers operated by defendant have sold bowling supplies certain of which have been manufactured by defendant, but denies that they have done so in substantial competition with either PARAMUS BOWL-O-MAT or PUEBLO BOWL-O-MAT.

42. Defendant denies the allegations of paragraph 42 of the Complaint.

43. Defendant admits the allegations of paragraph 43 of the Complaint.

44. Defendant has no knowledge or information sufficient to form a belief as to whether in 1964 and thereafter to the date of the filing of plaintiffs' Complaint most bowling centers had great difficulty in meeting payments to defendant. It admits that certain of them had such difficulty. It has no knowledge or information sufficient to form a belief as to whether BOWL-O-MAT bowling centers had such difficulty, but alleges that each Bowl-O-Mat operating subsidiary which was indebted to defendant on secured contracts has since paid the balances due defendant, as modified by certain agreements between them and defendant.

45. Answering paragraph 45 of the Complaint, defendant admits that in or about June, 1964, plaintiff NATIONAL BOWL-O-MAT CORPORATION negotiated for extensions of due dates and reductions in amounts of payments of the indebtedness to defendant of several of its affiliated bowling center operators, including those referred to in paragraph 43 of the Complaint. It admits the allegations in the second sentence of paragraph 45 except that it alleges that said 4½% was not an additional interest charge but was the total financing and extension charge. It denies the allegation in the third sentence of paragraph 45.

46. Defendant denies the allegations in paragraph 46 of the Complaint.

47. Defendant has no knowledge or information sufficient to form a belief as to the allegations in the first sentence of paragraph 47 of the Complaint. It denies the allegations in the remainder of said paragraph.

48. Answering paragraph 48 of the Complaint, defendant has no knowledge or information sufficient to form a belief as to whether Bowl-O-Mat resolved to sell the FORT LAUDERDALE BOWL-O-MAT, INC., due to losses sustained by reason of its competition, if any, with IMPERIAL BOWL in Dania, Florida, and denies that it granted more favorable treatment to IMPERIAL BOWL on its debt owing to defendant than had been made available to FORT LAUDERDALE BOWL-O-MAT, INC.

49. Answering paragraph 49 of the Complaint, defendant realleges by reference the allegations in its answer to paragraph 31 thereof, and further answering admits that the conditional sale agreements of which the obligations were assumed by FORT LAUDERDALE BOWL-O-MAT, INC., required the consent in writing of defendant for any sale or transfer of the equipment purchased thereunder. It denies the allegations of the last sentence of paragraph 49.

50. Answering paragraph 50 of the Complaint, defendant realleges the allegations in its answer to paragraph 31 thereof, and, except as therein admitted, it denies the allegations in the first two sentences of said paragraph 50. Further answering, defendant denies the allegations in the last sentence of paragraph 50, except that it admits that it operates IMPERIAL BOWL in Dania, Florida, and alleges that it began the operation thereof on or about March 1, 1965, prior to its beginning the operation of

LAUDERDALE LANES. It alleges that it had previously sold pinsetters, lanes and related equipment to the former operator of IMPERIAL BOWL under conditional sale agreements which provided for payment of the purchase price over a period of years and further provided that in the event of default in the making of such payments, defendant would have the right to repossess such pinsetters and lanes, among other rights; that said former operator defaulted in the making of such payments and defendant, pursuant to its rights under said conditional sale agreements, repossessed the pinsetters, lanes and related equipment in said bowling center. Defendant thereupon determined that its only reasonable prospect of offsetting all or any substantial part of its losses by reason of such defaults was to operate such repossessed equipment in place until such time as its equipment and its operation of such bowling center could be sold as a going business for a fair price to a responsible operator and that, accordingly, defendant entered into possession of the premises of said bowling center pursuant to a lease to it from the owner thereof.

51. Defendant denies the allegations of paragraph 51 of the Complaint.

52. Defendant denies the allegations of paragraph 52 of the Complaint.

53. Defendant denies the allegations of paragraph 53 of the Complaint.

54. Defendant denies the allegations of paragraph 54 of the Complaint, but alleges that in some of the bowling centers operated by it it has installed A-2 conversion kits, which are available to all operators of bowling centers equipped with defendant's pinsetters.

55. Defendant admits that its Model A-2 pinsetters and its earlier model pinsetters, when modified by the use of its A-2 conversion kits, are more efficient than other pin placement devices in that they reduce the time necessary to complete a game of tenpins and thereby enable bowling centers so equipped to accommodate a larger number of bowlers than bowling centers having an equal number of lanes not so equipped. Further answering, defendant alleges that it equips bowling centers operated by it with A-2 conversion kits only in instances where it has determined that in its judgment the volume of business available to such centers is such that said conversion kits will pay for themselves within a reasonable time.

56. Answering paragraph 56 of the Complaint, defendant admits that it has installed A-2 conversion kits in its bowling center in Fairlawn, New Jersey.

57. Answering paragraph 57 of the Complaint, defendant admits that it has announced its intention to install A-2 conversion kits in the bowling center operated by it in Pueblo, but denies that it has installed or that it has any present intention of installing such kits in the bowling center operated by it in Poughkeepsie.

58. Defendant admits that the bowling centers operated by plaintiffs PARAMUS BOWL-O-MAT, PUEBLO BOWL-O-MAT and HOLIDAY BOWL-O-MAT, respectively, are not equipped with A-2 pinsetters or A-2 conversion kits. It has no knowledge or information sufficient to form a belief as to the allegations that PARAMUS BOWL-O-MAT has lost, and that HOLIDAY BOWL-O-MAT and PUEBLO BOWL-O-MAT will lose, business to bowling centers operated by defendant as a result of having failed to purchase such A-2 equipment.

59. Defendant denies the allegations of paragraph 59 of the Complaint.

60. Defendant denies the allegations of paragraph 60 of the Complaint.

61. Answering paragraph 61 of the Complaint, defendant realleges by reference thereto its foregoing answers to paragraphs 39, 40 and 41 of the Complaint.

62. Defendant denies the allegations of paragraph 62 of the Complaint.

63. Defendant denies the allegations of paragraph 63 of the Complaint.

64. Answering paragraph 64 of the Complaint, defendant realleges by reference its foregoing answers to paragraphs 52 through 59 thereof.

65. Answering paragraph 65 of the Complaint, defendant realleges by reference thereto its foregoing answer to paragraph 19 of the Complaint and, except as therein admitted, it denies the allegations of said paragraph 65.

66. Answering paragraph 66 of the Complaint, defendant realleges by reference thereto its foregoing answer to paragraph 21 of the Complaint and, except as therein admitted, it denies the allegations of said paragraph 66.

67. Answering paragraph 67 of the Complaint, defendant realleges by reference thereto its foregoing answer to paragraph 23 of the Complaint and, except as therein admitted, it denies the allegations of said paragraph 67.

68. Defendant denies the allegations of paragraph 68 of the Complaint.

69. Defendant denies the allegations of paragraph 69 of the Complaint.

70. Defendant denies the allegations of paragraph 70 of the Complaint.

71. Defendant denies the allegations of paragraph 71 of the Complaint and denies that the plaintiffs have any lawful grounds for attempting to determine, or to recover as damages herein, the "reasonably expectable profits," if any, referred to in said paragraph.

72. Defendant denies the allegations in paragraph 72 of the Complaint.

WHEREFORE, defendant denies that the plaintiffs are entitled to the relief prayed for in said Complaint or to any of such relief, or to any relief whatever in the premises, and prays that this action be dismissed and that it be awarded judgment for its costs herein.

By way of Counterclaim against the plaintiffs, NATIONAL BOWL-O-MAT CORPORATION; PUEBLO BOWL-O-MAT, INC.; BOWL-O-MAT PARAMUS OPERATIONS; HOLIDAY BOWL-O-MAT, INC.; SAGINAW BOWL-O-MAT, INC.; PARADISE BOWL-O-MAT, INC.; MUNCIE BOWL-O-MAT, INC.; SKORE LANES BOWL-O-MAT, INC.; MINNEAPOLIS BOWL-O-MAT, INC.; DES MOINES BOWL-O-MAT, INC.; and INDIANAPOLIS BOWL-O-MAT, INC., and against DANIEL LIEBLICH, and REUBEN DANKOFF, as counter-defendants, Brunswick Corporation alleges:

First Count.

1. This count is brought under 15 U. S. C. §§ 2, 15 and 26, including statutes commonly known as the Clayton Act and the Sherman Act, to recover three times the damages resulting from injury to the business and property of counterclaimant caused by counter-defendants' violations of Section 2 of said Sherman Act, and for injunctive relief against further violations thereof by counter-defendants.

2. Counterclaimant is a corporation organized under the laws of Delaware, having its principal offices at

Chicago, Illinois and a place of business in New Jersey. It is and for many years has been engaged in the business, among others, of manufacturing and selling to operators of bowling centers and to bowlers, directly or through dealers, bowling equipment, including lanes, automatic pin placement machines, or pinsetters, and related equipment, and pins, balls, shoes and other bowling supplies. Counterclaimant is one of the two largest and best known manufacturers and sellers of such equipment and supplies, the other being American Machine & Foundry Company (hereinafter referred to as "AMF"). Counterclaimant's bowling products are widely known and are sold throughout the United States and elsewhere and have long enjoyed a favorable reputation among bowlers and operators of bowling centers.

3. On information and belief,

(a) Counter-defendant NATIONAL BOWL-O-MAT CORPORATION (hereafter referred to as "BOWL-O-MAT") is a corporation organized under the laws of New Jersey and has its principal place of business in the City of Paterson, County of Passaic, State of New Jersey.

(b) Counter-defendant PUEBLO BOWL-O-MAT, INC. is a corporation organized under the laws of New Jersey, which owns a bowling center in Pueblo, Colorado, and is wholly owned by BOWL-O-MAT.

(c) Counter-defendant BOWL-O-MAT PARAMUS OPERATIONS is a corporation organized under the laws of New Jersey, which owns a bowling center in Paramus, New Jersey, and is wholly owned by BOWL-O-MAT.

(d) Counter-defendant HOLIDAY BOWL-O-MAT, INC. is a corporation organized under the laws of New

York which owns a bowling center in Wappingers Falls, New York, and is wholly owned by BOWL-O-MAT.

(e) Counter-defendant SAGINAW BOWL-O-MAT, INC. is a corporation organized under the laws of New Jersey, which owns a bowling center in Saginaw, Michigan, and is wholly owned by BOWL-O-MAT.

(f) Counter-defendant PARADISE BOWL-O-MAT, INC. is a corporation organized under the laws of New Jersey, which owns a bowling center in Puerto Nuevo, a suburb of San Juan, Puerto Rico, and is wholly owned by BOWL-O-MAT.

(g) Counter-defendant MUNCIE BOWL-O-MAT, INC. is a corporation organized under the laws of New Jersey, which owns a bowling center in Muncie, Indiana, and is wholly owned by BOWL-O-MAT.

(h) Counter-defendant SKORE LANES BOWL-O-MAT, INC. is a corporation organized under the laws of Michigan, which owns a bowling center in Detroit, Michigan, and is wholly owned by BOWL-O-MAT.

(i) Counter-defendant MINNEAPOLIS BOWL-O-MAT, INC. is a corporation organized under the laws of New Jersey, which owns a bowling center in Minneapolis, Minnesota, and is wholly owned by BOWL-O-MAT.

(j) Counter-defendant DES MOINES BOWL-O-MAT, INC. is a corporation organized under the laws of New Jersey, which owns a bowling center in Des Moines, Iowa, and is wholly owned by BOWL-O-MAT.

(k) Counter-defendant INDIANAPOLIS BOWL-O-MAT, INC. is a corporation organized under the laws

of New Jersey, which owns a bowling center in Indianapolis, Indiana, and is wholly owned by BOWL-O-MAT.

The locations of the above-mentioned bowling centers are referred to hereinafter as "Bowl-O-Mat locations."

4. Counter-defendant DANIEL LIEBLICH is a resident of New Jersey. On information and belief, he is a stockholder, officer and director of counter-defendant BOWL-O-MAT, is the chief executive officer thereof and, either directly or through BOWL-O-MAT, supervises and directs the operations of the counter-defendant corporations hereinabove alleged to be subsidiaries of BOWL-O-MAT.

5. On information and belief, GENERAL BOWLING CORPORATION is a corporation organized under the laws of New York and, either directly or through affiliated corporations, operates a number of bowling centers in various parts of the United States.

6. Counter-defendant REUBEN DANKOFF is a resident of New Jersey. On information and belief, he is a stockholder, officer and director of GENERAL BOWLING CORPORATION and chief executive officer thereof, and, either directly or indirectly, supervises and directs the operation of the bowling centers operated by GENERAL BOWLING CORPORATION and/or its affiliated corporations.

7. BOWL-O-MAT and/or its subsidiaries, and GENERAL BOWLING CORPORATION and/or its affiliated corporations are known as "chain" bowling operations because they constitute a number of bowling centers under common direction and control.

8. On information and belief, both BOWL-O-MAT, or a corporation or corporations affiliated with it, or DANIEL LIEBLICH, and GENERAL BOWLING CORPORATION, or a cor-

poration or corporations affiliated with it, or REUBEN DANKOFF, operate a number of bowling centers for AMF.

9. BOWLING PROPRIETORS' ASSOCIATION OF AMERICA, INC. (hereinafter called "BPAA") is an incorporated trade association, having its principal office in Illinois. Its membership consists of three classes of members residing or doing business in all parts of the United States, viz: (i) Regular Members, who are operators of bowling centers and members of state, city, district or regional bowling proprietors' associations affiliated with BPAA; (ii) State and Local Association Members, which are state, city, district or regional bowling proprietors' associations; and (iii) Associate Members, who are persons, firms or corporations engaged in the manufacture, sale or distribution of bowling equipment or supplies. At all times since at least 1961, BPAA has had a Chain Operations Committee, the stated purpose of which is to study and make recommendations with respect to the special problems incident to the chain ownership and operation of bowling establishments. Counter-defendants DANIEL LIEBLICH and REUBEN DANKOFF are and have been since at least 1961 active members of said Chain Operations Committee and one or more of the corporations with which each of them is associated is a Regular Member of BPAA.

10. Beginning in 1964, counterclaimant has undertaken the operation of a number of bowling centers, the previous operators of which had defaulted in their payments to counterclaimant under conditional sale agreements for the purchase of pinsetters, lanes and related bowling equipment. Counterclaimant undertook such operations in each instance after determining that the repossession and operation in place of its equipment offered it the only reasonable prospect of offsetting all or any substantial part of its losses by reason of such defaults. It is

and has been counterclaimant's intention to operate such bowling centers only until its equipment and its operation thereof can be sold as going businesses to responsible buyers and on reasonable terms.

11. At all times since counterclaimant commenced the operation of bowling centers, as aforesaid, it has laid down for its employees, has announced publicly, and has enforced in good faith, to the best of its ability, rules for the operation thereof designed to assure that the bowling centers which it operates would compete fairly and openly with other bowling centers, without taking or seeking any unfair advantage by reason of the fact that counterclaimant is a manufacturer and seller of bowling equipment and supplies. While attempting, by the operation of bowling centers, to offset losses which it has incurred on account of defaults in the making of payments on purchases of bowling equipment from it, counterclaimant has attempted also to maintain the business and the good will which it had with bowling center operators generally in the sale of its bowling equipment and supplies. Counterclaimant is ready and willing to sell bowling equipment and supplies, at its regular established prices and terms, to all operators of bowling centers, new or existing, wherever located, including any in direct competition with a bowling center operated by counterclaimant.

12. Counter-defendants, individually and by combination and conspiracy among themselves and with others whose names are presently unknown to counterclaimant, have attempted to monopolize interstate trade and commerce in the business of operating bowling centers in and near the above-described Bowl-O-Mat locations by eliminating and excluding counterclaimant as a competing operator of bowling centers in or near such locations, in

violation of 15 U. S. C. § 2, commonly known as the Sherman Act.

13. In furtherance of their attempts to monopolize and their combination and conspiracy to monopolize, as aforesaid, counter-defendants have:

(a) made and published false statements to other bowling center operators to the effect that the operation by counterclaimant of bowling centers is an unlawful attempt by it to monopolize the bowling center business.

(b) made and published false statements to other bowling center operators to the effect that counterclaimant has exercised in areas where it operates bowling centers power to fix the prices for bowling lineage for other bowling centers in such areas;

(c) made and published false statements to other bowling center operators to the effect that counterclaimant subsidizes bowling centers operated by it with the purpose of driving out of business competing operators of bowling centers;

(d) made and published to other bowling center proprietors false statements to the effect that counterclaimant attempted to cause the counter-defendants which are subsidiaries of Bowl-O-Mat to default on their obligations to counterclaimant by granting them less favorable credit terms than granted to their competitors, with the purpose of taking over and operating such Bowl-O-Mat centers;

(e) made and published false statements to other bowling center proprietors to the effect that counterclaimant deceitfully, untruthfully and in bad faith has represented that it is willing to sell the

equipment and operation of the bowling centers which it operates to responsible buyers and on reasonable terms;

(f) made and published false statements to other bowling center operators that counterclaimant has not attempted in good faith to require the bowling centers which it operates to observe the principles of fair competition which it has formulated and published as the principles laid down by it for the operation of such centers;

(g) caused and sought to cause Bowling Proprietors Association of America and various local organizations affiliated with it, by making to them the false statements alleged in the foregoing subparagraph (a), to adopt resolutions condemning counterclaimant's operation of bowling centers as unfair and damaging competition to other bowling center operators;

(h) urged other bowling center operators to boycott counterclaimant as a source of bowling equipment and supplies;

(i) instituted the action against counterclaimant set forth in plaintiffs' Complaint herein without good or sufficient grounds for doing so, has circulated among other bowling center operators copies of said Complaint and has publicized its said suit widely among other bowling center operators, both orally and in writing.

(j) solicited and urged Bowling Proprietors Association of America and various of its affiliated local organizations to help defray the expenses of prosecuting the claims against counterclaimant which are

alleged in the complaint of the plaintiffs in this cause and, in the course of such solicitation and inducements, made the false statements alleged in the foregoing subparagraph (a) and further statements to the effect that counterclaimant's operation of bowling centers is a menace to the business of all other bowling center operators and that, if the plaintiffs herein should prevail upon the claims alleged in their complaint, other bowling center operators throughout the country might be in a position to recover large amounts of damages from counterclaimant on the basis of similar charges,

all with the willful, wanton and malicious purpose and intent of creating suspicion, resentment and ill will against counterclaimant in the minds of other bowling center operators, who are counterclaimant's market for the bowling equipment and supplies which it manufactures and sells, to the end that such other operators will not purchase bowling equipment and supplies from counterclaimant and thereby it will be coerced to abandon its operation of bowling centers in or near said Bowl-O-Mat locations.

14. In making the false statements about counterclaimant alleged in the foregoing paragraph 13 hereof, counter-defendants either knew that such statements were false or made such statements recklessly and maliciously, without knowledge as to their truth or falsity.

15. The above alleged attempts to monopolize and combination and conspiracy to monopolize are continuing and will continue hereafter unless enjoined by this Court, and threaten counterclaimant with injury and damage to its business.

16. By reason of the above alleged attempts to monopolize and combination and conspiracy counterclaimant has been damaged in its business in the amount of $1 million.

Second Count.

1. This counterclaim is brought under 15 U. S. C. §§ 1, 15 and 26, including statutes commonly known as the Clayton Act and the Sherman Act, to recover three times the damages resulting from injury to the business and property of counterclaimant by counter-defendants' violations of Section 1 of said Sherman Act and for injunctive relief against further violations thereof by counter-defendants.

2-11. Counterclaimant realleges by reference thereto paragraphs 2 to 11, inclusive, of its First Count herein.

12. Counter-defendants have combined and conspired with each other and with others whose names are presently unknown to counterclaimant to restrain interstate trade and commerce in the operation of bowling centers and in the manufacture and sale of bowling equipment and supplies, in violation of 15 U. S. C. § 1, commonly known as the Sherman Act.

13. Counter-defendants, in furtherance of their said combination and conspiracy, have agreed to do and have done the acts alleged in subparagraphs (a) to (j), inclusive, of paragraph 13 of the First Count herein, which are hereby incorporated by reference as subparagraphs (a) to (j), inclusive, of this paragraph.

14, 15. Counterclaimant realleges by reference thereto paragraphs 14 and 15 of its First Count.

16. By reason of the above alleged combination and conspiracy counterclaimant has been damaged in its business in the amount of $1 million.

Third Count.

1. This Court has jurisdiction of this counterclaim pendent to its jurisdiction of plaintiff's Complaint and of the First and Second Counts herein, for the reason that it arises out of the same acts and among the same parties and out of injuries and threatened injuries to the same business, and should be determined in the same proceeding in order to do complete justice among the parties.

2-11. Counterclaimant realleges by reference thereto paragraphs 2 to 11, inclusive, of its First Count.

12. Counter-defendants, individually and by combination and conspiracy among themselves and with other persons presently unknown to counterclaimant, have willfully, wantonly and maliciously injured the business of counterclaimant in the sale of bowling equipment and supplies and have attempted willfully, wantonly and maliciously to destroy counterclaimant's business in the operation of bowling centers and have willfully, wantonly and maliciously injured counterclaimant's business reputation and good will.

13. Counter-defendants, to accomplish the willful, wanton and malicious injuries alleged in the foregoing paragraph 12, have done the acts alleged in subparagraphs (a) to (j), inclusive, of paragraph 13 of the First Count herein, which are hereby incorporated by reference as subparagraphs (a) to (j), inclusive, of this paragraph.

14, 15. Counterclaimant realleges by reference thereto paragraphs 14 and 15 of its First Count herein.

16. By reason of the above alleged malicious injuries counterclaimant has been damaged in its business in the amount of $1 million.

WHEREFORE, counterclaimant seeks judgment against each and all of said counter-defendants in the amount of $3 million being threefold the amount of its actual damages, together with its costs and attorneys' fees herein, under its First and Second Counts and in the amount of $1 million for general damages and $2 million for punitive damages under its Third Count, and prays that the Court will issue writs of injunction herein, both temporary and permanent, enjoining and restraining the counter-defendants and each of them from further engaging in the attempts to monopolize or in the combination and conspiracy to monopolize alleged in the First Count herein, and from the combination and conspiracy to restrain interstate trade and commerce alleged in the Second Count herein, and from the willful, wanton and malicious injuries to counterclaimant's business alleged in the Third Count herein, and counterclaimant also prays for such other and further relief in the premises as the Court may deem proper and fitting.

STRYKER, TAMS & DILL

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EXCERPTS FROM TESTIMONY.

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DANIEL PARKE LIEBLICH, called as a witness on behalf of the plaintiff, having been duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Hoffmann:

Q. Where do you live?

A. In Paterson, New Jersey.

Q. Do you have a place of business?

A. Yes, sir.

Q. Where is that?

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A. Also in Paterson, New Jersey, at 140 Market Street.

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Q. What is the name of your business?

A. The Company is called Treadway Companies, Inc.

Q. In what business is Treadway Companies, Inc., engaged?

A. In three different types of business.

Q. Would you please describe them?

A. The first and the original one was—is the bowling business. That's the operation of bowling centers.

The second business is the operation of hotels or motor inns.

And the third is food distribution.

Q. What relationship, if any, does Treadway Companies have with the National Bowl-O-Mat Corporation?

A. Our company when it was formed in 1961 was called then National Bowl-O-Mat Corporation, since it was only in the bowling business.

In subsequent years, as the company began to diversify, its name was changed, first from National Bowl-O-Mat Corporation to NBO Industries, and then two years ago after the company acquired the Treadway Inns, we changed the name of our parent company to Treadway Companies.

So actually it is the same corporation but by different name.

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Q. Are you familiar with the Complaint which has been filed in this action?

A. Yes.

Q. I will read to you the names of the different plaintiffs as they appear in the Complaint and I will ask you, if you will, to please state the relationship which the different plaintiff companies have to Treadway.

First, Pueblo Bowl-O-Mat, Inc.

A. That's a wholly-owned subsidiary of Treadway Companies.

Q. In Treadway, sir, who is the president?

A. I am.

Q. Do you hold any office in Pueblo Bowl-O-Mat, Inc.?

A. Yes, sir.

Q. What is that office?

A. I am president of that company as well.

Q. Do you in the course of your duties actually supervise and control in some way the activities of the various plaintiff companies?

A. Yes, under the policies laid down by the Board of Directors of Treadway Companies, I am directly responsible for the operations of all of the subsidiary companies.

Q. Now, sir, Bowl-O-Mat, Paramus, operation, how

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is that company customarily referred to in the industry or within the Treadway organization?

A. Paramus Bowl-O-Mat.

Q. In respect of Paramus Bowl-O-Mat, who is the chief officer?

A. I am.

Q. And is your testimony the same as to all of the other plaintiffs who are listed in the Complaint, that is to say, are you the president of all of the plaintiff companies?

A. Yes, I am.

Q. And as you said before, the chief officer?

A. Yes.

Q. Subject to the direction of the directors of Treadway; is that right?

A. Yes.

Mr. Hoffmann: I will then, perhaps, save time, if I may, your Honor, by just indicating the names again and ask the witness where these various centers are located and how they are commonly referred to.

The Court: Paramus is a subsidiary of Treadway, right?

The Witness: Yes, your Honor.

Q. Holiday Bowl-O-Mat, Inc.?

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A. A subsidiary.

Q. Where is that located?

A. In Wappingers Falls in New York, which is just outside of Poughkeepsie, New York.

Q. Is your testimony as to that the same as before, you are the president of Holiday?

A. Yes.

The Court: Also a subsidiary?

The Witness: Yes.

Q. Can we take that for these other plaintiffs whom I shall now read, it is a subsidiary of Treadway and you are the president of that subsidiary company; is that right?

A. Yes.

Q. Next one, Saginaw Bowl-O-Mat, Inc., where is that located?

A. Saginaw, Michigan.

Q. Paradise Bowl-O-Mat, Inc.?

A. It is in a suburb of San Juan known as Puerto Nuevo.

Q. Muncie Bowl-O-Mat, Inc.?

A. Muncie, Indiana.

Q. Skor Lanes Bowl-O-Mat, Inc.?

A. In Taylor Township, Michigan, which is a suburb of Detroit.

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Q. And again these are all subsidiary to Treadway?

A. Yes.

Q. Minneapolis Bowl-O-Mat, Inc.?

A. That's located, technically, St. Anthony Township, which again is a suburb of Minneapolis, just on the borderline of Minneapolis.

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Q. Des Moines Bowl-O-Mat, Inc.?

A. That's Des Moines, Iowa.

Q. Indianapolis Bowl-O-Mat, Inc.?

A. Indianapolis, Indiana.

Q. Can you tell us whether or not Treadway is a publicly owned company?

A. Yes, sir; since 1961 it has been listed for trading on the American Stock Exchange.

Q. Will you list for us who the officers of Treadway are?

A. I didn't hear your question.

Q. Will you list the officers of Treadway?

A. Yes. I am the president and Chairman of the Board. The vice presidents are Richard A. Davis, Richard A. Lumsten, Jerry Lacker, the treasurer is Simon Gluckman, the secretary is Murray L. Cole.

Q. Does Treadway itself operate any bowling centers?

A. No, it does not. You mean the Treadway Companies.

Q. The Treadway Companies itself.

A. No, it does not.

Q. Now, sir, I hope you will be good enough to tell us a little bit about your background, your business life. First, where you were born.

A. I was born in Paterson, New Jersey.

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Q. And where were you raised, so to speak, brought from birth to adulthood?

A. In Paterson.

Q. And as to your formal schooling, sir, where did that take place?

A. I attended local schools in Paterson, and I attended the Hunt Preparatory School in Princeton, New Jersey, then attended Princeton University, from which I graduated just before the war. I went to law school and completed my law school at Yale after the war.

Q. There is sort of a gap in your life. Were you in the war in some way?

A. Yes, sir.

Q. In what branch of the service?

A. I was in the Air Force for five years during the war.

Q. I take it we are talking about the war that is called World War II, is that correct?

A. Yes.

Q. Just incidentally, when you entered the armed forces, the Air Force, what rank did you have?

A. I was a second lieutenant when I entered the service.

Q. And when you came out of the service, what

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rank—

A. I was lieutenant colonel at that time.

Q. Have you since left the service altogether?

A. Yes, sir; after quite some years in the Air Force Reserve after the war, I retired a few years ago as colonel in the Air Force Reserve.

Q. Thank you very much.

Mr. Lieblich, are you a member of the Bar of this state?

A. Yes, I am.

Q. When were you admitted?

A. 1948.

Q. And did you actively practice law upon your admission?

A. Yes, I did.

Q. For how long a time?

A. Well, I was in active practice until perhaps six or seven years ago.

Q. Let me ask you this. When did you become—you personally—first become interested in bowling as a business?

A. In about 1958.

Q. Can you tell us the circumstances?

A. Yes, sir. I was then engaged in the practice of law. I specialized in corporate law and real estate law,

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and corporate syndication. And I became attorney for a group of people that were beginning to organize a bowling center.

Q. Do you have any recollection of what general bowling conditions were like in 1957 or '58, were they good, bad or indifferent, something of that order?

A. Well, to use a different word, they were excellent.

Q. And how was that knowledge obtained?

A. Well, when I first began to represent this group of investors they had one bowling center that just opened in Paterson and consisted of 52 lanes. And I was well aware of the great profit that it was throwing off. And subsequent to that I embarked upon, as counsel with these people—with the construction of two additional bowling centers in New Jersey, Columbia Park, just outside of Jersey City, and Paramus Bowl-O-Mat, which is one of the plaintiff companies.

And I was quite aware, from the very beginning, how very successful those operations were.

Q. Tell us, please, about when it was that you first went into the bowling business, yourself.

A. Well, after the initial experience representing these clients, and families, in or about 1959 I thought this was a wonderful form of investment. I could see a great deal of possible expansion, to build a company

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and recreation, and with my family, some of my close friends, we embarked upon a program of acquiring and building bowling centers around the country.

And before long I found myself involved in the administration of the affairs of those companies on a more or less full-time basis.

Q. You speak of companies. Was a company formed to carry out the purpose you have described?

A. Yes, sir. As we would undertake a new operation—if my memory is right, Saginaw Bowl-O-Mat in Michigan was the first that I undertook myself as a venture. We formed a new company called Saginaw Bowl-O-Mat. And as we proceeded to the other companies, because there are often different groups of investors, each became a separate corporation, with monies contributed to each by that group of investors.

Q. Now, sir, you say that these separate companies were all wholly-owned subsidiaries. Was that some later corporate change?

A. Yes, sir. At that time there was no National Bowl-O-Mat Corporation, and of course, there was no Treadway Companies. And each was a separate corporation. However, even at the first meeting of my clients and families, we envisioned then a public company one day. And after we had approximately ten of these companies

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organized I made arrangements with the gentlemen who became our Board of Directors to work with a Wall Street investment banking firm.

And early in 1961 a public corporation was organized known as National Bowl-O-Mat Corporation. And at that time all the stock of these ten different companies that I had organized all became part of National Bowl-O-Mat Corporation. An investment banking firm underwrote a few—about $1,800,000, so we could continue our efforts to acquire additional centers throughout the country.

Q. Is that National Bowl-O-Mat Corporation that you described now the predecessor to the present Treadway Companies?

A. Yes, sir.

Q. Mr. Lieblich, coming to your first company, Saginaw, that you have described briefly in your testimony, what sort of equipment is in the Saginaw center?

A. It is Brunswick equipment, automatic—

Q. How was it obtained?

A. It was purchased from the Brunswick Corporation on a conditional sale contract.

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Q. In relation to all of the other centers, except for Holiday and Wappingers Falls, what was the equipment?

A. They were all Brunswick equipped.

Q. And were they obtained in the same way by a conditional sales contract?

A. Yes, sir; but some of the centers that are part of the plaintiffs we did not build ourselves, we purchased from former owners. And in those cases we assumed their obligation on the conditional sales contract that they had executed with Brunswick prior to our purchase of their assets.

Q. Can you segregate them out for us, tell us which are which?

A. Yes, sir. We built ourselves Saginaw Bowl-O-Mat, Muncie Bowl-O-Mat, Indianapolis Bowl-O-Mat, and Minneapolis Bowl-O-Mat. And we purchased from other owners Holiday Bowl-O-Mat, Paradise Bowl-O-Mat, Fort Lauderdale Bowl-O-Mat, Des Moines Bowl-O-Mat and Skore Lane Bowl-O-Mat.

I neglected one that we built ourselves. That was in Pueblo, Colorado. I think I have covered all of the plaintiffs.

Q. In relation to Holiday, which I had sort of filtered out, what was the source of supply for

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equipment for that?

A. They had AMF automatic pinsetters, pin spotters.

Q. And that was a center which you purchased?

A. Yes, sir.

The Court: Just to refresh the jury's mind, tell them what AMF is again.

The Witness: There are two companies that manufacture bowling equipment—there are a few more, but none really of any significance—one was Brunswick Corporation and the other one was American Machine and Foundry Company, now called AMF.

The Court: Thank you.

• • •

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Q. I believe before the recess I was asking you about the named plaintiffs in the Complaint. Treadway is one; is that right?

A. Yes.

Q. You charge that Treadway in some way was injured by the practices contained—described in the Complaint?

A. Yes.

Q. In what way is that?

A. Well, the profit or loss that the Treadway Companies reports on an annual basis to its stockholders is the sum of the profits or losses of all of its subsidiary companies.

To the extent that some of the bowling subsidiaries have been so badly affected we have lost over one million dollars in just four of the plaintiff companies where Brunswick has competed with us, and it certainly has had

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a terrible effect on the performance of the company since the years since we have been a public corporation.

Q. Does Treadway file a consolidated earnings report along with its subsidiary companies?

A. It just files a report which is a composite of all of the operations of its subsidiary companies.

Q. Does Treadway have any independent ways of making money other than through its subsidiary companies?

A. It has some management contracts in the parent name, but aside from that it is purely the result of the profits or losses of its subsidiary companies.

Q. So it is fair to say that when the subsidiary companies make money, Treadway makes money; is that the meaning of your question?

A. Yes.

Q. Is the same true on the loss side, that when its subsidiaries lose, so does Treadway?

A. Yes. We had a very difficult time for many, many years with losses in our companies.

Q. Mr. Lieblich, you were in the courtroom, were you not, when I made my opening statement?

A. Yes, I was.

Q. Did you observe my cumbersome gestures when I was trying to mimic throwing a bowling ball down the center of a bowling lane?

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A. Yes.

Q. And I tried in my own way to describe a bowling center, did I not?

A. Yes.

Q. Would you be good enough to describe it for the jury and the Court?

A. Well, I think you described it rather accurately, Mr. Hoffmann. I think as everyone knows, what the game of bowling is, it is on television so frequently, the game itself consists primarily of throwing a ball down the maple lanes to strike down the ten pins that stand.

There are two balls in each frame. If you hit the pins down with one, it is called a strike.

If it is the second ball, if you use a second ball, it is a spare, if you hit the remaining pins.

There are ten frames in a game.

That's the basic game itself.

Of course, the automatic pinsetters at the end of the deck will pick up the pins and reset them in place of the pinboys that were prevalent many, many years ago.

That's merely a part of what a bowling center is. We consider them as family recreational centers.

In addition to the game itself, we have many other elements of the center that we in fact offer our patrons or customers.

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We have nurseries so that as each year goes by we have more and more ladies that bowl in the daytime, and often leave their children with us in our nurseries.

We have a snack bar where ladies in the morning can have a coffee or sandwich, and later at lunch or dinner hour our customers can have refreshments.

We have cocktail lounges, where the liquor laws permit. In some of our cocktail lounges we have entertainment where the community calls for that type of activity.

We rent shoes at our centers, it is called shoe rental income.

We have games, we have cigarette machines, all these are part of the income that we look forward to in the operation of bowling centers.

We try to cater to all aspects of the community, ladies, children, school children, open bowlers and league bowlers.

Q. These various activities besides bowling which you describe as taking place in bowling centers, are they sources of revenue as well as the bowling of the game?

A. Yes, in some of the areas they are a very important part of the income that we derive from the operation of the center itself.

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Q. Is there in the operation of Treadway any system for the reporting of the traffic that goes through a bowling center part of your chain?

A. Yes.

Q. Would you describe that for us, please?

A. Well, at Paterson we have our corporate headquarters, and all of the accounting functions of the company are handled in Paterson.

Every day the managers of our local bowling centers will deposit in local banks in their communities the receipts for the prior day's activities, then they mail in to Paterson that very day what we call a daily report, which describes the income of that prior day.

All payrolls are processed in Paterson, all bills are paid from Paterson.

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Q. Do the reports which you receive include reports of the economic conditions within the bowling industry?

A. Yes.

Q. Is that done on any regular periodic basis?

A. Well, this is done in any number of ways. During the year I will go out myself to visit our field operations whenever I can. And when I do. And I try to visit other centers in those communities. I attend, whenever I can, meetings of the Bowling Proprietors of America, where the problems—good or bad—of the industry are discussed. The other our men on our staff in the bowling division are constantly concerned with what is happening in the industry. From all these sources I do get a good picture of what is happening in our industry.

Q. Do you receive reports which describe in any precise way the income received by your separate bowling centers?

A. Yes, sir.

Q. How often are those reports received?

A. Well, as I indicated, Paterson is the central administrative headquarters for the company. And we have a computer department. And each month profit

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and loss statements are prepared for every subsidiary company, which, of course, I receive, and our department heads receive. And we, in that manner, do know every month just how each of our companies is proceeding.

Q. And do those reports you speak of come across your desk?

A. Yes, sir.

Q. And do you examine them as they are received?

A. Yes, I do.

Q. Is that a practice of yours?

A. Yes, it is. It always has been.

Q. Do you receive reports as to inventory in your various bowling centers? When I say, "your," I mean, of course, Treadway's various bowling centers.

A. Yes.

Q. Are they submitted on a regular basis?

A. Yes, they are.

Q. How often?

A. The monthly profit and loss statements can't be prepared until the inventory reports come in from the field. The monthly profit and loss statements would be meaningless without an understanding of what the inventories in the field operations are at

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the end of each month.

Q. Has this structure of reporting, which you describe, of reports which flow between your subsidiary companies and Treadway, been true since the beginning?

A. Yes, sir; they haven't varied at all, except we didn't have a computer in the early days and we have one now.

Q. Is that something bigger than the one I brought into the courtroom yesterday?

A. Yes, sir.

Q. Earlier in your testimony, Mr. Lieblich, you described coming into the bowling center business at the end of the 1950's and at the beginning of the 1960's, and I asked you to describe what your impression was in the late 50's of economic conditions in the industry. If I may remind you, sir, you chose not to follow the words I gave—were they good, bad or indifferent—but you said they were excellent. Do you have any summary you can give us of the economic conditions as they prevailed in the bowling industry in this country in the period of time covered by the 1960's?

A. Yes.

Q. Has that condition changed or does it

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persist?

A. It changed very dramatically.

Q. And about when did that happen?

A. The downturn began to occur just immediately after we became a public company in the Spring of 1961. I wasn't precisely aware of it, as it was occurring. Later, in retrospect, it was rather clear what was happening. I recall that soon after we had this public offering I attended the first meeting that I ever did of the Bowling Proprietors Association of America. Each year there is an annual meeting of all the leaders of the industry, all the proprietors, as well as the leaders, and I attended the first one in June 1961. It was held in a resort community in New York State. And at that time I was made painfully aware of what was happening around the country as more and more bowling centers were opening and the profits of 1958, '59 and '60 were quickly disappearing and losses were being sustained.

And I remember, also, at that very convention, one of the proprietors brought in a publication called Barrons—this is a very well known financial publication, it comes on a weekly basis—and they had in this, in June of 1961, a very revealing article which was entitled, "Wobbly Pins." And a

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very perceptive young editor of that publication predicted just what was going to happen in the bowling industry. And he spoke of the overbuilding and what effect it was going to have on the affairs and activities of the companies involved in the bowling industry.

Q. Mr. Lieblich, do you have any standard measurements which would speak to the health or lack of health of the economy in bowling?

A. Yes, sir.

Q. Can you give us some example of that?

A. Well, when I was describing the game of bowling, I said there were ten frames in a game. And a game is also referred to as a line of bowling. This is the measurement of the game.

Now, when I first become involved in the bowling business, I had my first discussion with the Brunswick Corporation as to what should constitute a successful bowling operation, it was given me to understand that 14,000 lines per lane, 14,000 games per lane per year was what we could anticipate. And as I indicated earlier—as to my clients, and my friends, and my family—the investments in these bowling centers was always predicated on the assumption that we would be doing

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14,000 lines per lane. As a matter of fact, the first three bowling centers with which I was involved, all in New Jersey—Columbia Park, Bowl-O-Mat in Paterson and the Paramus Bowl-O-Mat—we enjoyed for the first three years of those operations 15,000 lines per lane.

So I was quite satisfied with that which Brunswick had suggested to me and, I learned elsewhere in the industry, was appropriate. That was the measure of profitability of bowling in those early days.

Q. That is, 14,000——

A. 14,000 lines per lane, yes.

Q. And when you speak of 14,000 lines, are you suggesting an annual figure?

A. Yes, sir; so that if we had a 40-lane bowling center, 40 lanes times 14,000 would be 560,000 games or lines in that whole year.

Q. Just for the sake of clarity, you are saying a line is the same as a game?

A. Yes, sir; they are interchangeable words.

Q. And then what you just gave in your calculation, was it not, was to take the number of lines and multiply it by the number of lanes?

A. Correct.

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Q. Was there in the 1960's any way in which you could take the number of lines and lanes and from that derive an income picture for a bowling center?

A. Yes.

Q. How would you do that?

A. Well, each year we would know exactly how many lines per lane we did bowling. So it is just a matter of examining our statements at year-end, see how many lines that we did bowl in a center.

Q. But to convert that into revenue another factor is necessary.

A. Yes.

Q. What would that be?

A. That would be the price we are charging.

Q. Yes. And was there any average price per line that you can fairly describe as being an average price existing during the first part of 1960?

A. Yes, sir; I think it is a generally fair statement, not just for our company, but most everyone that I encountered throughout the industry—the average price was approximately 50 cents per game.

Q. Did there come a time when that average price changed somewhat?

A. Yes. With the tremendous inflation we have had

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in the last 10 or 11 years, the prices gradually increased. It has increased much less than the cost of living, much

less than the cost of other recreational activities. And today, I would say the average price is approximately 60 cents. So in these 10 or 12 years our price has gone up approximately 20 percent, which is considerably less than any other form of recreation.

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Q. Now, then, one element of the revenue in a bowling center is the number of lanes bowled times the price?

A. Yes.

Q. What other elements are there?

A. Well, there is our shoe rental, our snack bar income, our cocktail lounge income, our pro shop income, or if I may describe, we call the pro shops the little retail stores that we have in each of our centers where we sell to our customers bags, balls and shoes, and what we call miscellaneous income, which is the revenue from cigarettes, games and other concession items, sale of lockers, rental of lockers.

Q. Do you use any formula in the practice of your business to equate in some way, that is, to indicate what the revenue from the actual bowling of games is in relationship to other revenues that comes in, such as you have just described?

A. Yes.

Q. What is that formula, and if there is one, explain how it came to be.

A. It is merely an analysis, from our own records, over a period of many years as to the actual income that we have received from these other areas of business related to our income in bowling itself, so analyzing

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our own figures for a period of years it is a relatively simple procedure to determine that from every dollar, from every

thousand dollars of bowling revenues that we enjoy we will get a certain additional amount of income from our shoe rentals, our snack bars, our cocktail lounges, and these other miscellaneous areas of income.

Q. Do you know offhand from your own memory what the relationship is, that is to say, how much $1,000 of bowling game revenue can realize in terms of the other revenues?

A. Not from my memory because it will vary from center to center, depending upon the mix of products we have.

For example, in Minneapolis we do not have a full liquor license because of the local laws, so I wouldn't expect that our cocktail lounge there, which sells just beer, to produce the same amount of revenue or income as our lounge would in Detroit, where we have a very active bar.

Mr. Hoffmann: May I just have a moment to do some housekeeping, please?

Q. Mr. Lieblich, how would you classify the general expenses incurred in doing business by your bowling subsidiaries, Treadway's bowling subsidiaries?

A. I don't understand.

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Q. Of what kind are these expenses? There are expenses, are there not?

A. Yes, sir.

Q. Would you break them down into their types, if you will?

A. Yes. The single greatest expense we have is the cost of our labor. Even though we have automatic pinsetters to take the place of the pinboys of prior years, labor is still our greatest single expense.

The next highest category of expense, there are two that almost equal each other, one is the rent that we would pay to a landlord, and of almost equal significance is the depreciation that we have on our equipment.

Q. Before going on, would you pause to tell us what you mean by depreciation on your equipment?

A. Depreciation is a bookkeeping or an accounting term. Perhaps I could best describe it by saying that if you bought an adding machine for $150, and you knew from experience that in ten years that adding machine would wear out, you should depreciate that adding machine by $15 each year, so that at the end of the ten-year period you'd have—you'd be able to buy a new adding machine, because that is the expected life of an adding machine.

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We apply the same principles in business, and of course, in our bowling industry, to all of the bowling equipment that was purchased.

So each year we set an expense on our books for depreciation which is the estimated life of the equipment so that we can establish a reserve in order to purchase new equipment when that equipment will be worn out.

Q. Now, you say that was your third greatest expense item, depreciation of equipment?

A. No, in many cases it is identical to our rental expense.

Q. And are there any other expenses that come to mind?

A. Oh, yes, there are many.

Utilities are a significant expense, taxes too—on real estate and personal property.

A much higher expense than either utilities or taxes are—is interest. When you borrow money to pay for

equipment or you purchase equipment on a conditional sales contract, it is done on a finance contract, and the interest involved is a very sizeable, or was for us a very sizeable expense.

Then the expenses really trail off. Repairs and maintenance are still a large item.

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Then we go down, there is telephone expense and cleaning up here and cleaning up there, resurfacing every year. Cost of our pins each year.

And I think I have touched on most of the major items. I'm sure there are one or two that I have left out.

Q. Are any of these expenses that you have just listed constant expenses, expenses of more or less the same size from year to year?

A. Yes, our labor cost is essentially identical.

Although real estate taxes go up each year, they are basically the same, they go up a little every year.

Depreciation is, of course, a constant expense.

Interest remains high, is ultimately reduced as the debt is paid off.

Repairs and maintenance remain essentially the same each year, although as the center gets older one would expect to spend a little more money to keep it in good condition.

Q. Is in your experience as an owner and operator of bowling centers, is the kind of profit yield, made by the activities you have described, more or less—

Mr. Seeley: Will you just hold up for a second? The airplane.

Mr. Hoffmann: Quite so. I shall withdraw

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the question entirely.

(Record read.)

Q. Is the type of profit more or less the same for every dollar that's expended; in other words, I'm putting the question a little differently perhaps, can you anticipate that for the first dollar over expense that you have an operating bowling center you may have the same yield in profit as you would have for the last?

A. Well, bowling is a very unusual business in this important sense, and when I was discussing before the economics of the industry, I suppose I should have enlarged upon my answer on this very point: It was for this reason primarily that I became interested in the bowling business, that was why I was able to have invested so many millions of dollars initially from my clients and my friends and my family, and ultimately from the public.

Bowling is a very—bowling is a very attractive business in the sense that it is called in Wall Street and other areas a very highly leveraged business.

I will try to explain to you what I mean by "highly leveraged." The major expenses from running a bowling center are some of these fixed expenses that I have described to Mr. Hoffmann, our salaries remain fairly constant, our depreciation is constant, our taxes are

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constant.

Now, with these fixed expenses remaining the same, if we do 5,000 lines per lane—of course, we couldn't stay in business by doing something so small—or 10,000 lines per lane, once we pass a certain number of lines per lane or games each year, and for this purpose let's say it is about

eight or nine thousand lines, then every additional dollar of bowling revenue that comes into that center becomes profit for the center operator.

That sounds unusual, but it is not because there are no really additional expenses involved translated to that additional income.

What I'm saying, Mr. Hoffmann, is that if we should go from 9,000 lines per lane to 14,000 lines per lane, as we used to do, our depreciation isn't going to be any more, the taxes we pay on real estate wouldn't be any more, we won't pay our landlord any more money for rent, we may have to add just a few dollars of additional help for the center, but not really very much.

And this is what makes bowling or made bowling back in those days so very attractive. It is because of this highly leveraged aspect based on the fact that bowling is a business of fixed expenses.

If I can compare this with a manufacturing estab-

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lishment, if someone is producing automobiles and they make 8,000 automobiles, if they make another 4,000 automobiles they have very specific expenses, the cost of these new automobiles and the labor involved.

We don't have them.

Mr. Hoffmann: Your Honor, may I have this marked as P-1 for identification?

(Exhibit P-1 marked for identification.)

The Court: What is it, short legend?

Mr. Hoffmann: 1 for identification is a computation of the proprietor's interest and depreciation and cash needs.

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And I think, if I may, I will also have marked at the same time, since they go together, a computation entitled "Charges for determination of net income by Brunswick and by Brunswick customers."

(Exhibit P-1-A marked for identification.)

By Mr. Hoffmann:

Q. Mr. Lieblich, I show you what's been marked as Plaintiff's Exhibit 1 for identification and I ask you if you can tell us what it is.

A. It is a chart showing the computation of individual proprietor's interest and depreciation and the cash that he would need to pay his equipment obligations to Brunswick Corporation.

Q. Can you tell us how this chart was prepared?

A. Yes, sir. I prepared it from my knowledge of the cost of the Brunswick pinsetters and the cost for Brunswick lanes.

Q. From what was your knowledge derived?

A. Not only from our own records, but my knowledge of industry practices, Brunswick charges other people in the industry as well as ourselves.

Q. And do you have records which support this chart?

A. Yes, sir.

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Mr. Hoffmann: Now, I'd like, if I may, to go through these items with the witness.

Mr. Seeley: I suggest it is not in evidence yet, your Honor.

Mr. Hoffimann: I'm trying to establish the document as a document for evidence.

The Court: Any objection to it?

Mr. Seeley: Yes.

The Court: Do you want to cross-examine him as to the foundation or the practices used?

Mr. Seeley: I certainly do.

The Court: In arriving at these figures. He said he prepared them based on his experience in the industry and his records; right?

The Witness: Yes, your Honor.

The Court: I will permit you to cross-examine him.

CROSS-EXAMINATION ON VOIR DIRE.

By Mr. Seeley:

Q. Mr. Lieblich, in the caption of Plaintiff's Exhibit 1 it refers to computation of proprietor's interest. Now, is that any particular proprietor?

A. No, it is a hypothetical, any proprietor.

Q. Is it every proprietor; does this purport to represent the interest and depreciation and cash

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need of every proprietor?

A. Yes, I think so.

Q. I notice here that under "Interest" you show that a pinsetter was purchased for $8100 which is payable over a period of eight years.

The Court: Just a minute.

Are you familiar with these figures without referring to them?

The Witness: Yes.

The Court: You don't have them in front of you?

The Witness: Yes, I do. Mr. Hoffmann gave me a copy.

The Court: All right.

Q. And the interest you show over eight years is $218; is that right?

A. Yes.

Q. Per year?

A. That's right.

Q. And in the line——

The Court: Can I hear that again?

(Record read.)

The Court: I didn't hear you say "per year."

Mr. Seeley: Right.

Q. Now, on the lane you show that purchased on

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a five-year basis, and the interest per year on that to be $102; is that right?

A. Yes.

Q. And adding $218 and $102, you come to $320, per year interest, right?

A. Right.

Q. If a proprietor, any proprietor, for instance, made this purchase of a pinsetter and lane in 1960 and followed this schedule of payments, his lanes would be paid for by 1965, wouldn't they?

A. That's right.

Q. And then his interest would go down by $102 per year from then on?

A. That's right.

Q. And after he had paid for eight years, if he paid by the schedule, he'd have no more interest to pay on the pinsetter, either, would he?

A. That's right.

Q. No interest expense then.

Now, does this exhibit, Plaintiff's Exhibit 1, purport to speak as of any particular time; is it 1965, or 1969?

A. It is a hypothetical presentation on the cost to a proprietor who purchased the Brunswick equipment under the bases that we have set forth here.

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Q. Does it matter when he purchased it?

A. No.

Q. But whenever he purchased it——

Mr. Hoffmann: Pardon me. I hate to interrupt your voir dire, but may I point out, Your Honor, that this line of questioning does not go to admissibility, but to the weight to be attached to the document, as to which I submit with great respect that your Honor can carefully guide the jurors as to the weight significance of the document; in other words, the admissibility doesn't depend upon the span of years, but it depends upon the meaning of the presence of itself, which has to do with how much needs to be paid, for example, to Brunswick while the proprietor is indebted to Brunswick.

The Court: Yes, but the witness has conceded this was a hypothetical case that was used as the basis for the preparation of this chart.

I think your adversary is entitled to cross-examine as to other practices that would be considered as far as this chart is concerned. I think that's the area in which you are getting into.

Mr. Seeley: That's correct, your Honor.

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The Court: I will permit it. Overruled.

By Mr. Seeley:

Q. Your company has frequently made payments to Brunswick on equipment contracts, have they not?

A. Yes.

Q. And you have been shown by statements how those were applied as between principal and interest when they were received by Brunswick?

A. No, but if we asked this question we could get this breakdown.

Q. Have you ever observed how they were applied?

A. Observed what?

Q. How the payments made by the Bowl-O-Mat companies were applied to their indebtedness by Brunswick?

A. I think there were some occasions when we made inquiry and ascertained.

Q. What, if anything, did you learn at that time with respect to whether the interest was charged on a declining balance so that it was higher at the beginning of the period of indebtedness than it was at the end?

A. Yes, interest was applied to the unpaid balance.

Q. So that this hypothetical figure of $320 per year might in fact be something different every year during the eight-year contract, wouldn't it?

A. No.

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Q. And yet you say it was applied first to interest on the unpaid balance, and wasn't the unpaid balance being reduced?

A. Yes.

Q. And didn't that mean that the interest was reduced with each payment?

A. Well, this $320 is an average of what we paid over the eight years.

Q. Oh, it is an average.

So it doesn't apply to any particular time?

A. It is an average, that was your question before, it is an average of each year.

Q. Now, the Bowl-O-Mat companies had had some extensions of their indebtedness, have they not?

A. Yes, there were some occasions when that occurred.

Q. And if a Brunswick customer obtains an extension of indebtedness that changes its interest figure, average interest figure, doesn't it, from that time on?

A. Yes.

Q. Or it may, I wouldn't say it does, it may?

A. It would increase it.

Q. And have you any knowledge as to how many Brunswick customers there are today, that is, when I say "Brunswick customers" I mean people who in the past have

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purchased lanes and pinsetters from Brunswick; have you any knowledge as to how many of them have completely paid off their obligation and have no interest charge?

A. In 1972?

Q. Any time you wish.

A. No, I don't.

Q. Or '70, or 1968.

A. Yes—oh, excuse me, not on the overall. I was privy to some figures on some of the Brunswick—

Q. Some?

A. Yes.

Q. Now, as a matter of fact, the Bowl-O-Mat companies paid off their indebtedness to Brunswick in full in 1966, did they not?

A. They did.

Q. Did they have any interest expense after that?

A. Yes, sir.

Q. How did they incur that?

A. Well, in order to pay off Brunswick we had to borrow a million and a half dollars from different banks around the country, so we had to pay interest to the banks instead of to Brunswick.

Q. From the standpoint of a proprietor's cash need, as you put it, does it make any difference whether

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the proprietor owes X dollars to Brunswick or owes X dollars of interest to a bank or somebody else?

A. Yes.

Q. What's the difference?

A. It would depend upon the financing arrangement with the bank as contrasted to what the arrangement was with Brunswick.

Q. I am assuming it is the same number of dollars in each case, does it make any difference from the standpoint of cash need whether the proprietor owes $100 in interest to a bank or $100 in interest to Brunswick?

A. No.

Q. Now let's go from interest to depreciation.

You show here, I believe, a cost of equipment, this is new, I suppose, of $15,000 per lane, right?

A. Yes.

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Q. And you show depreciation of $15,000 for 15 years, coming out to $1,000 per lane per year, right?

A. Correct.

Q. Are there other ways of taking depreciation than to divide it into 15 annual installments?

A. Yes, this is a conservative approach.

Q. Well, regardless of whether it is conservative or not, are there other ways?

A. Yes.

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DIRECT EXAMINATION (Continued).

By Mr. Hoffmann:

Q. Mr. Lieblich, addressing your attention again to plaintiff's Exhibit 1, what is the purpose of this, looking at the top title, Computation, Proprietor's Interest, Depreciation and Cash Need; what does it purport to show, in a general way?

A. Well, it shows the interest cost on the purchase of the pinsetter from Brunswick and the purchase of the bowling lane from Brunswick. It shows——

Q. Hold just to that line. Is that first line of the exhibit, after the words, "interest, pinsetters, lane,"——

A. Yes, it has the price of a pinsetter.

Q. That price is indicated as what?

A. $8,100.

Q. From where did you get that figure, $8100?

A. I know that is what we paid. And I know that is what Brunswick told me that they had to sell every pinsetter at because of their arrangements with

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CIT Corporation, which was financing for them these pinsetters.

The Court: Before we go any further, is it fair for this Court to assume that you cannot testify from your own recollection, and you need this to refresh your recollection with regard to the preparation of this instrument?

The Witness: I remember the $8100.

The Court: No, I am not talking about specific items, I am talking generally. You have to refer to it, do you not?

The Witness: Yes, sir.

The Court: All right. Proceed.

Mr. Hoffmann: I would like at this time to have marked as plaintiff's Exhibit 1B a document containing six sheets of paper stapled together and bearing on top the legend, "Brunswick Automatic Pinsetter Corporation," with an address, and an indication: Sold to Minneapolis Bowl-O-Mat.

(Exhibit P-1B marked for identification.)

Q. Mr. Lieblich, I show you what has been marked as plaintiff's Exhibit 1B for identification and ask you if that is a copy of a document, the

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original of which was received by you?

A. Yes.

Q. And is that one of the documents used in putting the computations on plaintiff's Exhibit 1 for identification?

A. Yes, this is a bill from the Brunswick Automatic Pinsetter Corporation to——

The Court: May I have a copy?

Mr. Hoffmann: Sorry.

(Document handed to the Court.)

Q. Can you read from the top, please, what the bill is about.

A. Yes, it is a bill from the Brunswick Automatic Pinsetter Corporation to our Minneapolis Bowl-O-Mat for the 36 automatic pinsetters that we purchased from Brunswick in 1961 at a cost of $8100 per pinsetter, for a total cost of $291,600.

Q. And do you have other material of that type which supports the entry of $8100?

A. Yes.

Q. Now, Mr. Lieblich, coming back to plaintiff's 1 for identification, there is the next line that indicates a down payment on the pinsetter, is that right?

A. Yes.

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Q. And that amount is $500, is that correct?

A. Well, it's $18,000. But divide 18,000 by 36, that is $500 per machine, which was always the required down payment on all the pinsetters that Brunswick sold.

Q. You better explain that more slowly. Looking at plaintiff's Exhibit 1, that's the chart entitled, "Computation, Proprietor's Interest and Depreciation."

A. Yes.

Q. Under pinsetter you have a price of $8100, is that correct?

A. Yes.

Q. After that a down payment of $500. From what is that 500 derived?

A. Well, from our general experience, that was what it cost as a down payment on the Brunswick pinsetter. We paid $500 down for each pinsetter.

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Q. Now, then, the next line, $7600, is that correct?

A. Yes.

Q. What is that, sir?

A. Well, $7600 is the difference from the cost of $8100 and the down payment of $500. If you subtract $500 from $8100, it is $7600.

Q. That $7600 represents what?

A. That would be the unpaid cost of that pinsetter to Brunswick Corporation. We still owe them $7600 for each pinsetter.

Q. After you put down the 500?

A. That's right.

Q. Now, I see beneath that line a 23 percent interest factor. What does that represent?

A. Well, Brunswick was financing these pinsetters to the industry on an eight-year basis and—

Q. Pardon me. From what is your knowledge of that derived?

A. From our own experience, as well as the Brunswick documents that we have been able to look at since the trial began, or since our Complaint was filed. And this factor on the chart of 23 percent was the formula that Brunswick used to calculate interest at six percent per annum over an eight-

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year period.

Q. In other words, that is Brunswick's own calculation, not yours, is that correct?

A. Yes, sir.

Q. I see beneath that, you have the figure of $1748, what is that figure?

A. Well, if you multiply the $7600 that we owe for a pinsetter, and multiply it by 23 percent, which is the Brunswick interest calculation, that would come to $1748 of interest that would be added onto the contract that we had been paying for over a period of eight years.

Q. And then when you put the eight years alongside of it, you have the number beneath?

A. Yes, sir.

Q. What is going on there?

A. By dividing eight years into the interest of $1748, we determined that we would need $218 each year to pay the interest on the pinsetter.

Q. Now, that is $218 each year?

A. Yes, per machine.

Q. And what has been involved in getting that $218 in this last calculation is division, is it not?

A. Yes.

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Q. Was the division made by you?

A. Yes.

Q. Now, if you go to the next column, it is "Lane."

A. Yes.

Q. The first item is price, $2500. What is that derived from?

A. Well, that is from my general knowledge of Brunswick charges to our company and to others. The lanes varied a bit. The pinsetters were always fixed at $8100, but the lanes would vary by a few hundred dollars. Sometimes you would buy a little more equipment in one place than in another. But on the overall, it came to approximately $4500 per lane.

Q. And when you say from your own experience, you mean in purchases you had made of lanes from Brunswick, is that the meaning of that?

A. Yes, looking at other companies who purchased Brunswick equipment.

Q. And the next item, $900, which has after it in parenthesis, 20 percent. What is that figure? The line is "down payment" under "lanes."

A. Yes. The down payment on the pinsetters was always fixed at $500. But on the lanes there was more flexibility. I have down here a $900 down pay-

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ment, which is 20 percent of the $4500. And that is a conservative approach. Generally, we paid a little bit more down than other companies did. Sometimes people would come in and pay less than 20 percent down. If they did, there would have to be a higher calculation of interest charges.

But I used what I considered to be a conservative figure, which more or less corresponded to our own overall experience in the amount of our down payments to Brunswick.

Q. And that results in this $900 after down payment on the lane?

A. That is correct.

Q. And then you do the same thing you did on the other side, the pinsetters, subtract the 900 from the 4500?

A. Yes, sir.

Q. Giving you a balance of what?

A. Of $3600 that we would owe Brunswick on the lanes after the down payment of 20 percent or $900.

Q. I see the next line, called interest factor. Under "lane" you have an item of .1425 percent; what does that reflect?

A. Well, this, too, is Brunswick's formula for the calculation of interest over a five-year period.

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Brunswick was financing the lanes over a five-year period rather than eight years, as they were financing the pinsetters. So the interest factor was not 23 percent, but here it is .1425 for the five-year period. That's a six percent interest.

Q. Then you have now a new line below that, which is 513?

A. Yes.

Q. That is the result of your doing the arithmetic which gives .1425 percent of $3600, is that correct?

A. Yes, sir.

Q. Once again—now, you say you used the five years, dividing 513; why was that?

A. Because this was financed over a five-year period, so that each year the interest would be $102. We ran it out. It actually was $102.50. For simplification, we ran it out to $102.

Q. And you come out with a total factor for the lane of what?

A. Of $102 for the lane, $218 for the pinsetter interest, or a total of $320 per year, interest.

Q. That total is the interest paid by the proprietor to take care of his purchase of pinsetters and lanes from Brunswick, is that the meaning of the

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term?

A. Yes, sir.

The Court: After the fifth year that the lane isn't paid for, then you pay $218 interest for the next—

The Witness: Yes.

The Court: Let me ask you this, before you go any further. Suppose you keep the pinsetters for 10 years, 11 years. You save that interest on the third and fourth years, right, sir?

The Witness: No; after the eighth year there would be no further interest charge.

The Court: That's what I say.

The Witness: That is correct.

The Court: That accrues to the benefit of the holder of the pinsetters.

The Witness: Yes, after eight years.

The Court: What is the average life of a pinsetter, do you have any idea? Based on your experience, is it ten, twelve years?

The Witness: No, sir; it is more than that. It is a matter that is still not determined. Originally, we thought it would have a 15-year life. I hope now it will have a life

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of two years more than that.

The Court: A lane that's more than five years, does it not, Mr. Lieblich?

The Witness: Yes, sir.

The Court: Twenty years, right?

The Witness: Yes.

The Court: In some cases?

The Witness: That is correct.

The Court: All right. I was wondering what the five-year amortization——

The Witness: That's interest, sir, not depreciation.

The Court: I know. But I don't know why the interest is calculated over a five-year period.

The Witness: That was the financing contract they had offered.

The Court: All right.

By Mr. Hoffmann:

Q. Then going on, on the page, the next heading is depreciation.

A. Yes.

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Q. You described what depreciation was earlier in this; could you briefly state it again?

A. Well, I will go back to my adding machine. That cost $150. And when we purchase it we understand in ten years it will wear out and we have to buy a new one. So we are going to depreciate that $150 adding machine over ten years. That's $15 each year. So each year we would have a charge on our books of $15. Theoretically, at the end of the ten years we would save that money and now we can have the cash to buy a new adding machine.

Q. Here on your depreciation you have, I see, pinsetter with $8100.

A. Yes. That's the cost of the pinsetter, without interest charge.

Q. You derived that figure as you testified before?

A. That's our cost.

Q. And the lane, $4500.

A. That was the cost.

Q. Cost of the lane. And then there is a heading "Other, $2400." And in brackets "Carpet, signs, cash registers, bar, snack bar, intercom, safe," et cetera.

What is that designed to reflect?

A. Well, in our experience, as we opened up bowling

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centers, or looked at figures of centers that we bought, in addition to this cost for the pinsetter and the lane, there was additional equipment that had to be purchased. There was carpeting, there were signs, there was a cocktail lounge that had to be furnished. There was a snack bar. There was a safe. There were the cash registers. All in all, the cost of this additional equipment was approximately $2400 per lane.

So that we come up and have always worked on a formula of $15,000 being the total cost for each lane that we would install.

Q. That's the addition of the pinsetter price, the lane price, and the other prices, is that correct?

A. Yes, sir.

Q. In the line after that you say 15,000 for 15 years equals one thousand per lane per year. What does that mean?

A. This is the depreciation of this equipment that I have described over a basis of 15 years. If you divide 15 years into the $15,000 per lane, that comes to $1,000 per lane per year for depreciation.

Q. Why have you picked 15 years as your depreciation?

A. Well, we just didn't pick it, sir. It was a matter of a good deal of interest and concern on our part, and

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on the part of our national audit firm. When we first

became a public company we utilized the services of Lybrand, Ross Bros. & Montgomery, and they were our auditors for several years.

Initially, as a private company, our investors took depreciation for a much shorter period of time. There are important tax advantages for individuals if they use what we call a faster depreciation.

But once we became a public company we thought it very important to present to the public as proper and as careful and as conservative an approach as we could on our depreciation. And so, along with our auditors, we surveyed most all the other public companies in the bowling industry and ascertained from them what type of depreciation, how many years they were depreciating their equipment.

As a result of our inquiry and as a result of the inquiry of Lybrand, Ross Bros. & Montgomery, we determined in 1962 that a fair rate of depreciation, which is a composite—we recognized that the lanes would last for 25 years, perhaps, but the carpets, and the signs, and the cash registers, the snack bar, would wear out sooner than that. So this is what we call a composite figure.

All things considered, 15 years is appropriate for

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the depreciation of all of our equipment. And we followed that consistently. I think this is more or less in industry normal. Some people take a longer depreciation. But this, I believe, is conservative and reflects what most people do in the industry.

Q. Now, in these calculations there is a heading "Cash need." What is that designed to show?

A. This is to show the amount of cash that a proprietor would need in those years to pay off his equipment

obligation to Brunswick, had he purchased it on the basis that I have described, or is described in this exhibit.

With respect to the pinsetter, where there was an unpaid balance initially of $7600—

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Q. Pardon me. Where did you get that $7600 from?

A. That's the $8100 cost less the $500 down payment.

Q. Yes.

A. We would have owed Brunswick $7600. I have demonstrated the interest charge of $748. If we add the $7600 and the $748, that's a total of $9,348 [sic] that we would have to pay Brunswick over an eight-year period.

Q. And why do you say over an eight-year period, why eight years?

A. That was the life of the contract that was then being offered to proprietors. And that comes to $1,168 per year.

Q. That's by dividing 8 into the $9,348?

A. Yes. Now, the same elements were applied with the cash needed to honor the lane contract. The lanes that we assumed would cost $4500, we paid $900 down, there was an unpaid balance of $3600. The interest for the five-year period was $513. Adding them together there would be a total cost of $4,113 per lane, which should be paid for over a five-year period.

Dividing 5 into $4,113, we ran to a cost of $823. And adding together, then, the total cash needed for both the pinsetter and the lane, it approximately ran

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about $2,000 per lane, for five years. And then the last three years it would be reduced by $823, as the lane is paid off, and we would continue the payments on the pinsetters for the balance of the life of their contract.

The Court: To break it down further, on a monthly basis it would be one-twelfth of that amount for each month, right?

The Witness: Yes.

The Court: Let's stop just for a few minutes.
Ladies and gentlemen of the jury, a short recess.

(Short recess.)

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Q. Addressing your attention still to Plaintiff's Exhibit 1 for identification, can you tell us whether this computation would apply to an independent proprietor while he was in debt to Brunswick for this equipment?

A. Yes, this is the average of the payments of a proprietor over the number of years that he was in debt to Brunswick under the conditional sale contracts.

Q. Would it apply with equal force to the first year of his debt under the contract as it would under the last?

A. Yes, the only difference between the first year and eighth year would be the difference in the interest, once the lanes were paid off. Otherwise it is exact.

Q. In other words, the interest would vary at the point in time when the lane was paid off because the contracts vary; is that your testimony?

A. Yes.

Q. Explain that again.

A. One contract was for five years and the other was for eight.

Q. And the contract for five years was what?

A. On the lanes and the contract for pinsetters was eight years.

Q. Now, was all of this data inserted into the

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schedule by you, was it prepared by you?

A. Yes.

Q. And upon what basis was it all prepared?

A. My general knowledge and my experience in the bowling industry.

Q. To the extent you have testified about specific documentation, did that also support the exhibit?

A. Yes.

Q. That is to say, the price that is to be found in contracts, is it not?

A. Yes.

Q. Is there anything else that comes from specific knowledge that you have supported by documentation?

A. Just the depreciation, I have explained how we arrive at a——

Q. The interest factor, where does that come from?

A. The contract, purchase agreements.

Q. From Brunswick?

A. Yes.

Mr. Hoffmann: If your Honor please, I now offer Exhibit 1 into evidence.

The Court: Any objection?

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Mr. Seeley: Yes. May I have a short voir dire examination, your Honor?

The Court: Where you left off?

Mr. Seeley: No, I am respecting your Honor's ruling.

I have a question which goes to the manner in which this exhibit was prepared.

The Court: I will permit it.

CROSS-EXAMINATION ON VOIR DIRE.

By Mr. Seeley:

Q. You said, Mr. Lieblich, that the figures on Plaintiff's Exhibit 1 represent the average cash needs of Brunswick's customers; did I understand that correctly? During the period that they were purchasing this equipment.

A. No, I didn't mean to say—that would be the exact cash need each year as the contracts were being paid.

Q. And did you——

A. Excuse me——

Q. I'm sorry, I didn't mean to interrupt you.

Please go ahead.

A. The interest was averaged over the years.

Q. Did you make any effort to verify what the actual interest payments of Brunswick's customers were

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as compared to what you have shown on Plaintiff's Exhibit 1?

A. Well, Brunswick's records, which were given to us, support the figures that I have down here.

Q. What records are those, sir?

A. There were a memoranda of the Brunswick Corporation, our attorneys gave to me after he received them from you, Mr. Seeley, which set forth this 23 per cent interest factor and all of the other factors on the interest calculations.

Q. But did you examine the actual cash needs of actual Brunswick customers at any period of time in making up Plaintiff's Exhibit 1?

A. I knew what our cash needs were. They automatically flow from the cost that I have set forth in the top part of the exhibit.

Q. Anybody else's?

A. Sir?

Q. Did you check anybody else's, any other customers?

A. As we purchased or sought to purchase other bowling centers, and I examined their books, I found essentially the same figures on their books.

Q. Do you have any of such records here in the courtroom?

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A. No.

Mr. Seeley: Your Honor, the defendant objects to Plaintiff's Exhibit 1 on the ground that it relates to a hypothetical purchaser of equipment from Brunswick who is not shown to correspond to one or two or one hundred or any other number of real Brunswick customers during the period we are involved in in this lawsuit, which I take it is from 1965 to the present date.

And in absence of such correspondence to reality we object to it on the ground that the hypothesis is irrelevant and misleading.

Mr. Hoffmann: Your Honor, in face of Mr. Seeley's voir dire, I would like to address the witness' attention to some of the supporting material which was used in order to show that quite to the contrary, that it is based on information which was supplied from the Brunswick company to the Bowl-O-Mat company.

The Court: In other words, you're asking me to reopen the direct examination——

Mr. Hoffmann: What I'm asking is that I be permitted a few more questions on direct before submitting or offering the exhibit into evidence.

The Court: Do you want to be heard on that?

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Mr. Seeley: No, I'm not trying to limit counsel's examination. If he can authenticate this he has a right to.

The Court: I don't know whether he has a right to or not, but I think it lies within the discretion of the Court as to whether or not to permit him to pursue it.

I will permit it.

DIRECT EXAMINATION (Continued).

By Mr. Hoffmann:

Q. I address your attention to 1-B, which has been marked for identification.

This is the document which you looked at before?

A. Yes.

Q. This shows a price for the automatic pinsetters, does it not?

A. Correct, yes.

Q. And in this regard there are several Brunswick invoices, are there not, documents relating to it?

A. Yes, it is a bill from the Brunswick Automatic Pinsetter Corporation for 36 lanes at $8100 apiece, with an interest charge which is 23 per cent of the balance owing, and it shows also the required down payment of $500 per machine.

Q. Now——

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The Court: I may be wrong, I think you said for 36 lanes. You mean 36 pinsetters?

The Witness: That's right.

The Court: All right.

Mr. Hoffmann: If your Honor please, I'd like to have Miss Costello mark as Plaintiff's Exhibit 2 for identification a document bearing the legend on top "Uniform operating procedure, automatic pinsetter order, RB-310."

(Exhibit P-2 marked for identification.)

Q. Mr. Lieblich, I show you what has been marked as Plaintiff's 2 for identification and I ask you if you can tell us what it is?

A. Yes, this is something you showed me some time ago, Mr. Hoffmann, and after you received it from the Brunswick company under your discovery or inquiry before trial.

Q. Would you be good enough to read the legend on top?

A. It says "Automatic uniform operating procedures, automatic pinsetter orders."

Mr. Hoffmann: May I, I will read the first item:

"The objective of this procedure is to outline the requirements for automatic pinsetter

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orders insofar as freight and drayage, cash payment, trade-in, finance charge, deferred payment terms, and discounts are concerned."

Q. Now I ask you to drop your eyes, please, to Item 5 on Plaintiff's Exhibit 2 for identification.

Do you see that, sir?

A. Yes.

Q. What does it say?

A. It says that the minimum cash payment required for the sale of automatic pinsetters is $500 per pinsetter plus sales tax.

Q. Does that correspond in any way with an entry made on Plaintiff's Exhibit 1 for identification for down payment?

A. Yes, it is the same, $500.

Q. Do you see anything else on Plaintiff's Exhibit 2 for identification which came from Brunswick which supports the entries made on Plaintiff's Exhibit 1 for identification?

A. Well, we show an interest factor of 23 per cent, in this bulletin they have 26 per cent, which is a little bit higher.

Q. That's under Item 7?

A. That's right.

Q. And you described your entry as 23 per cent

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as being conservative, did you not, before?

A. Yes, because ours is based on 6 per cent interest.

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Q. And if you had used 26 percent, which is found in item 7 of the Brunswick uniform operating procedure for automatic pinsetters, you would have had a higher interest charge; is that not so?

A. It would have increased the annual charge of interest and annual cash need.

Q. Mr. Lieblich, do you see on plaintiff's 2 for identification, do you see the date given anywhere?

A. It is July 15, 1958.

Q. Now, sir, can you tell us looking again at plaintiff's 1 for identification, if there are any items remaining on that exhibit which do not find support in the records ex-

amined by you coming from Brunswick other than sheer calculations of arithmetic?

A. Well, the $8100 cost is in here on the second page. This doesn't refer to lanes, this just refers to pinsetters.

Q. Now, you were testifying earlier, I'm not referring only to Exhibit 2 for identification, you were testifying earlier that the lane for $4500 was supported by the contract; is that not so?

A. Yes, approximately our average cost.

Some varied, some a little less, and some a little more.

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Q. Please attend to me carefully.

Would you look at plaintiff's 1 for identification?

A. Yes.

Q. I repeat my question: Do you see anything there which is not supported by records coming from Brunswick other than mathematical calculations?

A. That's correct, depreciation.

Q. And as to that, you had your testimony as to the accounting methods which were used?

A. Yes.

Q. Anything else, sir?

A. No.

Mr. Hoffmann: I offer Exhibit 1.

The Court: Same objection?

Mr. Seeley: Objection, with this elaboration, your Honor: that the supposed support for the exhibit now offered consists of one contract entered into in 1961 and one bulletin apparently from Brunswick credit department in 1958, which I think underscores the fact that there has been no showing here that these figures have any relationship to a real Brunswick customer during the period 1965 to 1972.

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The Court: Over the objection of defendant, into evidence.

(Exhibit P-1 received and marked in evidence.)

Mr. Hoffmann: I'd like to ask the witness some questions concerning Exhibit 1-A for identification.

Q. Do you have a copy of 1-A for identification, Mr. Lieblich?

A. Yes.

Q. Looking at the title, "Charges for determination of net income by Brunswick and by Brunswick's customers," what is this document?

Perhaps before I even come to that, sir—

A. Pardon me? Did you say 1-A?

Q. Yes.

A. I don't have it.

Q. Is this document prepared by you?

A. Yes.

Q. Can you tell us what it is, what is it designed to show?

A. Well, it is charges for the determination of net income by Brunswick and by Brunswick's customers.

Q. Looking first on the heading below, it

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is Brunswick's customers; is that right?

A. Yes.

Q. And you start with depreciation.

You testified about what depreciation is in connection with 1 in evidence. That $8100 figure, that's the pinsetter price; is that right?

A. Yes.

Q. And the lane, 4500?

A. Yes.

Q. The other, does that correspond to the other you have on 1, that is to say, carpets, signs, cash registers, and so forth?

A. Yes.

Q. That is item what?

A. $2400.

Q. What have you done here with depreciation?

A. We have divided the 15,000 cost——

Q. Pardon me. How did you get 15,000?

A. Same as on the other exhibit, it is an addition of the pinsetter cost of $8100, the lane cost of $4500, and all the other costs of $2400, adding together it is 15,000.

Q. And then the next line is a statement, is it not?

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A. Yes.

Q. And would you please tell us what that says?

A. It says, "The composite useful life of this equipment is 15 years."

Q. What does that mean?

A. As I explained before, that some of our equipment will last for more than 15 years, but some for less than 15 years, and so our national auditors and our accounting department determined that we'd use this composite of 15 years for all of the equipment, so we have divided the 15,000 cost by the 15 years and that comes to an annual charge of depreciation of $1,000 per lane per year.

So when I use the word, "lane," I have described the word lane and pinsetter.

Q. That is a charge that is called an annual depreciation charge?

A. Yes.

Q. And now, what have you done with the next heading, "interest"?

A. Well, the next heading is an additional expense that the proprietor has, and we had, and that's interest on the equipment which we were purchasing on the conditional sale contracts.

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Q. And do those items which reflect your interest charges, are those the same as described in detail on plaintiff's Exhibit 1?

A. Yes.

Q. That is to say, the interest per year on the pinsetter is reached in the same way?

A. Yes, it is the same figure of $218 per year interest on the pinsetter and the same figure of $102 per year on the lanes, for a total annual interest charge each year of $320 per year per lane.

Q. Then you have added them together for a total of $1,320?

A. Yes.

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Q. What is that, sir, it is called Brunswick's customers on top, and then at the bottom, total charges, $1320 per year?

A. That would be the total cost to the proprietor, such as the Bowl-O-Mat companies, would have on their books each year for depreciation and interest on a per lane basis.

Q. And that heading below is entitled "Brunswick"?

A. Yes.

Q. Would you tell us what you have done with that; what have you put there?

A. There are two categories, one is Brunswick's depreciation, and one is Brunswick's interest.

For Brunswick's interest we have zero, that's because in our pretrial inquiry, in the depositions of Brunswick, the

Chairman of the Board, and the president, at the prior trial, they testified there was no interest charged to the individual operations.

The other Brunswick cost, we have depreciation of $500 per year. We arrive at that $500 by, I recall it was done by some of the lawyers in your office, Mr. Hoffmann, while I was sitting there, they divided the total number of lanes that Brunswick was operating based on their reports to us by the total depreciation that the

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Brunswick figures reflected, and came to just about $500 per lane for depreciation.

* * *

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DIRECT EXAMINATION (Continued).

By Mr. Hoffmann:

Q. Mr. Lieblich, would you take a look at 1-A and tell us what the first part under "Brunswick's customers" represents?

A. The first part of the exhibit, Brunswick's customers, on this 1-A, is taken from Exhibit 1.

Q. Can you show us how that's done, Mr. Lieblich, with the pointer, perhaps?

A. On the first half of this exhibit we show depreciation for Brunswick's customers. This is depreciation that I talked about yesterday, being the result of the cost of each pinsetter of $8100, the cost of each lane of $4500, and the cost of all of the other equipment that went into the bowling center per lane, that is, the carpet, signs, cash registers, bar equipment, snack bar equipment, everything else, which totals approximately $2400 per lane.

The total cost of equipping each lane in the center was $15,000. If it was a 48-lane center it would be $600,000, but it would be $15,000 per lane.

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Q. Then we talked about the depreciation, for 15 years. Dividing 15 years into $15,000, the depreciation is $1,000 per lane.

The next category of 1A is the interest charged to the Brunswick customers. And that comes from this tabulation here.

As I said yesterday, the cost of the pinsetter was $8100. We paid a down payment of $500, which left an unpaid balance of $7,600 for each one of our pinsetters.

Since we were financing over an eight-year period, Brunswick's interest formula was 23 percent, totalling for the eight years $1,748 of interest for each pinsetter.

Dividing 1748 by eight years, that would total $218 for each of eight years for interest on the pinsetter.

The same arithmetic is applied to the lanes. There each of the bowling lanes cost $4500 with a 20 percent down payment of $900, unpaid balance of $3,600.

This was financed over a five-year contract, Brunswick's interest formula, .1425, or $513 interest for the five years.

Dividing $513 by five years, that's a

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total of $102 for each year.

Adding together the interest on the pinsetter of $218, the interest on the lane of $102, we have a total interest charge of $320 per year based on six percent interest.

Those, sir, are the calculations of the first part of the sheet.

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Q. Now, Mr. Lieblich, looking at Plaintiff's Exhibit 1-A for identification, is the material found on Plaintiff's 1 in evidence the material which constitutes the first part of the page under the heading "Brunswick's customers"?

A. Yes.

Q. And that material was based upon the records that you described yesterday in your testimony in connection with Plaintiff's Exhibit 1 in evidence; is that right?

A. Yes.

Q. Now, would you look farther down on the page to a heading "Brunswick"?

A. Yes.

Q. And would you read the first line——

A. There are just two entries, the first is "Depreciation, $500 a year," the next entry is "Interest, zero per year."

Q. Tell us the basis for your having posted depreciation for $500 a year?

A. Yes. That came from the records which Brunswick Corporation supplied to you, Mr. Hoffmann, and which you then turned over to our office so we could study them and complete our analysis.

That depreciation of $500 per year is the average

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of the Brunswick cost of depreciation on their books in their BCOD division.

Q. When you speak of the records you mean the records relating to the BCOD centers?

A. Yes.

Q. Perhaps you could describe what the initials BCOD mean.

A. BCOD stands for Brunswick Corporation Operating Division.

In 1965 when Brunswick began to repossess bowling centers around the country they set up this division, and all of the centers which they operate were part of that division.

You gave me, Mr. Hoffmann, after you received it from Brunswick, the profit and loss statements for each of those operations for every year from 1965 through 1972.

Q. Now, Mr. Lieblich, would you be good enough to look at the interest line, it indicates interest is not charged, is that correct, zero per year?

A. Yes.

Q. Can you tell us the basis for making that entry on the exhibit for identification?

A. Yes, sir. I was in Chicago with you some years ago when you took the depositions of the Chairman of the Board and the president of Brunswick Corporation and some

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of their other executives, and they all said that Brunswick did not charge any interest, they all said that there were no interest charges from the BCOD's to Brunswick itself.

And as we examined the records of the BCOD centers that you gave me we do not find an interest charge there to the parent company for monies advanced.

Q. Were those records of the kind of profit and loss statements and the like that you examined, the Brunswick records?

A. Yes.

Q. Those were records for the Brunswick centers?

A. Yes.

Q. BCOD centers; is that right?

A. Yes, they are Brunswick records.

Q. Then you have the next line, which is Total Charges Under Brunswick; what does that reflect?

A. That's a total of the depreciation of $500 per year and zero for interest, adding 500 and zero, that's $500.

Q. If you'd be good enough to turn the page, from 1A to page 2, you have a heading "Cash Need for Each Line Operated by Brunswick and by Brunswick's Customers."

First, what is the purpose of this; what is this designed to show?

A. This is to show that a comparison between the cash

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that is needed by the independent proprietor, such as ourselves, to pay the contracts to Brunswick, and the cash needed by the centers that Brunswick took over and began to operate themselves.

Q. And under Brunswick's Customers there are the two columns of figures for pinsetter and lane. Was this prepared by you, sir?

A. Yes.

Q. And tell me the records which underlie this, are these the same as the records which are to be found on Plaintiff's Exhibit 1 in evidence?

A. They are identical.

Q. What it amounts to is a runoff, is that right, of the previous exhibit?

A. Yes.

Q. And then after you have lines which show under "Pinsetter" at the bottom $1,168, and under "Lane" $823, you have a statement, for a total of $1,991 or $2,000 per lane.

Tell us, sir, what is meant by that statement; what does that total mean?

A. The total of $2,000 per lane is the amount that the Brunswick customer would have to pay each year to pay in full its contracts for the pinsetter and for the bowling lane.

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Q. And that total is simply a capitulation of the numbers that are on the page, isn't that so?

A. Yes, it is.

Q. And with the evidence underlying it, described in connection with Exhibit 1, is that correct?

A. Yes, they are the same basic figures.

Q. Then on the bottom you have one more line, Brunswick, and beneath that, cash need, zero dollars?

A. Yes.

Q. Will you explain what that means, sir?

A. Yes, sir; that means that the Brunswick-operated centers-, the BCOD centers, needed no cash at all to pay Brunswick itself.

Q. And when you say pay it yourself, do you mean for the two categories described in the exhibit, that's pinsetters and lanes?

A. Yes, sir; they had no obligation on their equipment debt.

Mr. Hoffmann: Thank you very much. I offer it in evidence.

The Court: When you say that, you mean BCOD Divisions.

The Witness: Yes, sir; each operator.

The Court: To the Brunswick Corporation.

The Witness: Yes, sir.

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Mr. Hoffmann: Now, if your Honor please, I offer it in evidence.

The Court: Mr. Seeley.

VOIR DIRE EXAMINATION.

By Mr. Seeley:

Q. Mr. Lieblich, the caption of the first page of plaintiff's Exhibit 1A reads, "Charges for determination of net income by Brunswick," I will stop there. Do not those words in your mind refer to Brunswick's net income?

A. No, sir; it is BCOD centers.

Q. Then the caption does not correctly express what the exhibit is intended to show, does it?

A. Yes, it does, sir. We are only talking about the BCOD centers here.

Q. What you are talking about, and what is on the exhibit, may be two different things. Is it not true that this exhibit says on its caption that it is talking about the net income of Brunswick, but that you say in your explanation: Oh, no, you are only talking about net income for the BCO Division?

A. That is not true, Mr. Seeley.

Q. I will make it shorter. Is it not true that this caption says, "Charges for determination of net income by Brunswick"?

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A. Yes.

Q. And is it not true that nowhere on this exhibit is anything said about BCO?

A. That is all that we are talking about, sir.

Mr. Seeley: I move that the answer be stricken as not responsive.

Mr. Hoffmann: Your Honor, I ask that it not be stricken, but that both the question and the answer be stricken as argumentative.

The Court: No, the answer will be stricken and the jury is instructed to ignore it.

Read the question.

(Question read as follows:

"And is it not true that nowhere on this exhibit is anything said about BCO?")

A. That is correct.

Q. Going down to the bottom of the first page of 1A, in the middle of the page, the word, "Brunswick" appears, does it not?

A. Yes, it does.

Q. And on the left-hand column, the second line, appears the word, "interest," right?

A. Yes, sir.

Q. And opposite that appears the figure zero per year, is that right?

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A. That's correct.

Q. Does Brunswick have zero expense per year for interest?

A. BCOD does have zero expense.

Mr. Seeley: I move to strike that as not responsive.

The Court: So ordered.

Mr. Seeley: Do you remember the question?

The Witness: Would you repeat it, please.

(Question read as follows:

"Does Brunswick have zero expense per year for interest?")

A. You mean Brunswick Corporation?

Q. I do, sir.

A. I am sure they must have interest expense. I am sure they must borrow money for acquisitions, and working capital, and many things.

Q. Do you actually know what they have borrowed money for, and how much they have borrowed, or how much their interest expense is?

A. No. I did see their annual reports in prior years. I know there must be an expense for interest.

Q. On the second page of Exhibit 1A, on the bottom of the page appears the word, "Brunswick," does it not?

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A. Yes.

Q. And it says under that, "Cash needs, zero"?

A. Yes, sir.

Q. Is that intended to convey again the idea that Brunswick has no cash need for interest expense?

A. This has nothing to do with interest. The caption on the top of the page says, "Cash need for each lane operated by Brunswick." We are not talking about the operation of lanes by BCO.

Q. The first part of the exhibit deals with Brunswick customers, does it not?

A. Yes, it does.

Q. And there, there is an item for interest, is there not?

A. On pinsetters and on lanes, yes.

Q. Why is it, then, that when you get down to Brunswick, cash need, zero, you say that doesn't have anything to do with interest?

A. Because Brunswick—BCOD—makes no payments of any type to Brunswick for equipment obligations.

Q. Is BCO different from Brunswick, is it a different legal person or is it the same person?

The Court: If you know.

A. I imagine it is a division, as our company is a

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division. Many public companies have divisions.

Mr. Seeley: I move that be stricken as not responsive.

The Court: Repeat the answer.

(Record read.)

The Court: I order it stricken. The jury is instructed to ignore it.

Mr. Seeley: Do you remember the question?

The Witness: Will you read it, please?

(Question read as follows:

"Is BCO different from Brunswick, is it a different legal person or is it the same person?")

Mr. Hoffmann: I object to the question, your Honor.

The Court: Why?

Mr. Hoffmann: On the ground that it calls for a legal conclusion concerning a subject matter as to

which there is no foundation in the evidence that this witness has any knowledge whatsoever.

The Court: The Court added something to it before: If he knows.

The Witness: Well, there are two questions that you asked. Will you repeat it?

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The Court: Overruled, Mr. Hoffmann, for the record.

The Witness: I will answer one at a time, if I may.

The Court: What is the answer to the first one?

The Witness: Will you repeat the first part?

(Question read as follows:

"Is BCO different from Brunswick, is it a different legal person or is it the same person?")

A. The first part, I think I can say: Yes, it is different from Brunswick.

Q. It is part of Brunswick?

A. No, the question was: Is BCO different from Brunswick? And I answer that: Yes, it is different.

Q. I understand.

A. The second question—sir, would you read it?

(Question read as follows:

"Is it a different legal person or is it the same person?")

A. My answer to that would be: I don't know.

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Mr. Hoffmann: • • • And nowhere is it indicated that there is anything wrong with the calculations here. They have nowhere themselves asserted any interest charge.

The Court: Do you have Exhibit P-1-A in front of you, Mr. Witness?

The Witness: Yes, sir.

The Court: Referring to page 2, does that refer to operations between BCO division and the Brunswick Corp[illegible]tion, also?

The Witness: Yes, sir; operated by Brunswick. That means BCO.

The Court: It means BCO, but it doesn't say it.

The Witness: It says operated by Brunswick.

The Court: Ladies and gentlemen of the jury, I made a ruling without your presence whereby I admitted this into evidence. I now amend that ruling, Mr. Hoffmann, that there will be a legend put on this exhibit that the figures relate to the BCO division and the Brunswick Corporation, or words to that effect.

If you two counsel cannot agree on a legend of that kind, then this Court will enter into it. So ordered.

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DIRECT EXAMINATION (Continued).

By Mr. Hoffmann:

Q. Mr. Lieblich, before we discusssed exhibits in the courtroom, you had been describing the parent operation,

Treadway, and I now come back to the specific bowling centers which were, according to your testimony, owned and operated by the plaintiffs in this case. The first of these that I want to ask you questions about is Pueblo. Can you tell us the name of that center?

A. Pueblo Bowl-O-Mat, Inc.

Q. And Pueblo Bowl-O-Mat is located in what town?

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A. In the City of Pueblo, Colorado.

Q. Can you tell us, of your knowledge, whether there are any other bowling centers located in Pueblo, Colorado?

A. Yes, there are.

Q. Would you describe such centers as may have existed in Pueblo at the time when Bowl-O-Mat first entered into a contract for bowling in Pueblo?

The Court: Before you answer that, when did that happen?

The Witness: In 1960.

The Court: With Brunswick?

The Witness: Yes, sir.

A. (Continuing.) At that time there was then in being at Pueblo a ten-lane center called Park Lanes, a 12-lane center called Payne's Lanes, and a 32-lane center called Bowlero. Those are the only centers in being in 1960.

Q. Did that situation change over the years?

A. With one addition. In August of 1962 another center, equipped with Brunswick equipment, opened in Pueblo, called Belmont Lanes.

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Q. Mr. Lieblich, could you describe for us, please, the circumstances under which Bowl-O-Mat went in to open up a center in Pueblo, Colorado?

The Court: Mr. Witness, just answer the question now.

A. Several months just prior to March 1960 I was in Denver, Colorado, looking at a new site which Brunswick had brought to my attention in Denver.

While there I conferred with Mr. Arthur Covert, who was the Brunswick branch manager for the Denver area, and with a real estate man called Harold Rogers.

After a few days in Denver we did not proceed with that installation, but Mr. Covert said he would call me if another installation came about in Colorado.

A few months after this meeting in Denver I received

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a telephone call in my office in Paterson from Mr. Covert, and at the same time Mr. Rogers was in his office, and I believe participated in the conversation. And Mr. Covert said that Brunswick had an excellent location for us in Pueblo, Colorado, which was just about to start construction, and he was very anxious to come to Paterson with the principals and see what could be done so that we would lease the building, which was then about ready to be constructed, and purchase the Brunswick equipment.

And I said "Certainly."

And a day or two later Mr. Covert flew into Paterson with Mr. Rogers, and another two gentlemen, one was Mr. Harrington, and a Mr. Stackhouse.

We conferred in my offices, my law offices, in Paterson. Mr. Stackhouse and Mr. Harrington were the gentle-

men who were putting up the building and who had intended to operate the bowling center as well, and to purchase the lanes and equipment from Brunswick.

As Mr. Covert said to me then, they didn't have the funds to construct the building and also to buy all of the equipment from Brunswick, and they were desirous of becoming landlords and renting the building to us if we would purchase the equipment from Brunswick and operate the center ourselves.

I asked Mr. Covert, the Brunswick branch manager,

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what kind of an area Pueblo was, and he said that in all of his years of experience with Brunswick he didn't know any community in the United States that needed a bowling center more than Pueblo. There were 40 lanes to go into this building.

He assured me that 17,000 lines per lane, which was an excellent volume of business, could be enjoyed by us in the operation of the 40-lane center in Pueblo.

We negotiated further, and Mr. Harrington and Mr. Stackhouse asked for a rather high rent for the building they were going to complete.

When they told me what the rental was I said it was the highest rental—

Mr. Seeley: I object to the conversation unless it was in the presence of some Brunswick representative.

The Court: Yes. Try to stay away from the hearsay area.

Objection sustained.

A. Mr. Covert was present during all these negotiations in my office.

They asked for this rent that I thought was very high, and then I said to Mr. Covert, "Would you step out in the hall with me?"

And Mr. Covert and I went out into the hall, and I

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expressed to Mr. Covert my concern about this high rent, and he said, "Dan, you won't make a mistake because I know you will do 17,000 lines per lane, you can well afford the additional rental."

I went back in then and continued the discussions with Mr. Harrington and Mr. Stackhouse, and though I had never been to Pueblo in my life, Mr. Covert said he would—I said, "I want to come out to Pueblo and look at it," but nonetheless Mr. Covert said he had or would have the area surveyed for me to support what he said.

And right then and there I shook hands in my office with Mr. Harrington and Mr. Stackhouse on the lease arrangement, it was later reduced to writing, but I shook hands, nevertheless, on what the arrangement would be, and also on the Brunswick arrangements.

Then I went out to Pueblo a few weeks later and received from Mr. Covert a Brunswick survey, the Brunswick survey, and looked at the site. And I visited other centers in the area that Mr. Covert had told me were there when he gave reasons why we would do so well.

And then the lease was prepared as we had shaken hands.

We bought from Brunswick the almost $600,000 worth of equipment for the center, and on or about August 1 of 1960 we opened for business.

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Mr. Hoffmann: I'd like to have marked as Plaintiff's Exhibit 3 for identification the area analysis for

Pueblo, Colorado, Pueblo County, Colorado, and an area analysis entitled "Pueblo, Colorado," previously marked at a deposition as—the first as Plaintiff's 275 for identification, and the second as Plaintiff's 273 for identification.

(Exhibits P-3 and P-4 marked for identification.)

Mr. Hoffmann: May we go off the record for a minute?

(Discussion off the record.)

Q. Mr. Lieblich, I show you what's been marked as Plaintiff's Exhibit 3 for identification only, and I ask you if you can tell us what that is?

A. Yes. This was the area analysis of Pueblo, Colorado, that I received from Brunswick company in the spring of 1960.

Q. In respect of P-3 for identification, is this the document to which you just referred in your testimony?

A. Yes.

Q. I show you now P-4 for identification. Will you please describe that for us?

A. Yes. This was a supplement to the area analysis that I received first from Brunswick Corporation.

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Q. In both instances do you remember having received these documents that are originals, of which these may be copies?

A. Yes, sir.

Q. And did you receive them——

The Court: I don't think the jury can hear you. Can you members of the jury hear him?

Juror No. 6: No.

The Court: When you stand so close to him, there is a tendency to keep your voice down.

Q. If you please, Mr. Lieblich, the documents you have in your hand, Plaintiff's Exhibits 3 and 4 for identification, either those or the originals represented by copies, were received by you; is that your testimony?

A. Yes.

Q. And were they received prior to your undertaking to open a center in Pueblo, Colorado?

A. Yes.

Q. Is there anything in either of those documents which played any substantial role in your decision—in your reaching the decision to open in Pueblo?

A. Yes.

Q. Can you call that to our attention, please?

A. On the last page——

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Mr. Seeley: If the Court please, I think we are a little ahead of ourselves. It hasn't been offered in evidence yet. Now he is getting into the contents of it.

The Court: Why should I permit him to read from it? I will sustain the objection.

Ask him the next question.

Mr. Hoffmann: I will offer the documents into evidence, your Honor, at this time. The witness has identified them as received by him and as their playing a role in his deliberation in opening a center.

The Court: And from a representative of the defendant Brunswick company?

The Witness: Yes.

The Court: Any objection?

Mr. Seeley: My objection is the same as I made at side bar.

The Court: Relevancy?

Mr. Seeley: Right.

The Court: Into evidence.

Mr. Seeley: And prejudicial.

The Court: All right. Into evidence.

(Exhibits P-3 and P-4 received and marked in evidence.)

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Q. Now, I show you Exhibits in evidence Plaintiff's 3 and Plaintiff's 4, and I ask you if you can to identify those parts of any of those exhibits which played some substantial role in your decision to open a center in Pueblo, Colorado.

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The Court: Which one are you referring to when you ask?

Mr. Hoffmann: First to plaintiff's 3.

A. Well, in P-3, on the last page, under the summary in the third paragraph—or second paragraph, it says:

"For 113 years Brunswick Corporation has been instrumental in the planning and building of thousands of recreation centers throughout the world. This experience well qualifies us for judging the merit of such an operation as proposed. Our diligence is constantly exerted to keeping the bowling industry

prosperous. The welfare of the proprietor is as much a factor to success as is our own.

"It would only be prudent to assume from the foregoing text that Pueblo can accommodate 50 more lanes of modern styling, combining the utmost comfort and convenience that the bowling business can offer."

Now, since we had contemplated 40 lanes, Brunswick's judgment that 50 lanes could be put in was a great deal of comfort to us.

Secondly, and the reason for the supplemental report on that, on P-3, there is my handwriting, "Write to Brunswick," and I wrote to Brunswick to get a more detailed report on the population.

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And in the supplemental report—

The Court: Wait a minute, now. You just answer the questions.

I won't permit that.

What's the next question?

Q. Is there anything else to which you wish to refer in plaintiffs' 3 which you feel played some substantial role towards your opening of a center in Pueblo?

A. Not comment and summary of P-3 was certainly very important to me.

Q. Now, will you look at plaintiffs' 4 in evidence?

A. Yes.

Q. I ask you the same question.

A. Yes. This one concerned itself with the population aspects of Pueblo, and the surrounding areas.

And on page 7 there was one paragraph of very great significance to me or to anyone in the bowling business.

On page 7 it says:

"In Pueblo we have a ratio of one alley bed per approximately 2,400 people. Compared with the accepted national ratio of one bed per every 1,000 people, it becomes immediately apparent that there

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is an apparent need for more bowling facilities in this area."

Q. Do you know whether or not there was anything wrong about the statement, "In Pueblo we have a ratio of one alley bed per approximately 2400 people?"

The Court: Answer that yes or no.

A. Yes.

Q. What is the basis for your knowledge?

A. Some years later I learned that the population figures that Brunswick had furnished us were not correct.

Q. How did you learn that?

A. After the center opened and the results were so terribly unsatisfactory I went out to Pueblo myself and visited with the Chamber of Commerce and with some of my people out there. We ascertained that the true population of Pueblo was considerably different than that which Brunswick had set it forth in this analysis.

Mr. Seeley: I move that that be stricken. It is his conclusion and summary of apparently a conversation taking place with an unidentified person outside the presence of any Brunswick person.

The Court: Why not, Mr. Hoffmann?

Mr. Hoffmann: I intend to withdraw

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the answer.

The Court: In the meantime it will be stricken and the jury will be instructed to ignore it entirely.

Q. With whom did you have a conversation concerning the subject matter at the time you went to Pueblo?

A. I don't recall the gentlemen's name at the Chamber of Commerce with whom I spoke in 1962. I spoke also with the publisher of the local newspaper, with the president of the largest bank in Pueblo, with the mayor of the City of Pueblo, with the City Assessor of Pueblo County, and of course with the Brunswick people. Several Brunswick representatives were in Pueblo with me.

Q. Limit yourself, if you will, please, to the conversation with Brunswick people—

The Court: Or reference to the officials he spoke to, the mayor and the assessor, et cetera, will be stricken on the Court's motion, and the jury will be instructed to ignore it.

Q. Did you have a conversation with the Brunswick people concerning the accuracy of the Brunswick area and analysis which was contained in plaintiffs' Exhibit 4?

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A. Yes.

Q. Tell us about that, if you will, please; identify who you were speaking with and where the conversation took place.

A. Yes.

The Court: And when?

Q. And when.

A. It was in February of 1962, and Mr. Blanks, Bill Blanks sitting over there, was in Pueblo at that time.

When I returned from my visit to Pueblo, I spoke with Mr. Milton Rudo, who was the president of the Bowling Division of Brunswick, and I made him aware of my findings.

Q. Did Mr. Rudo speak to you in this connection?

A. Yes.

Q. Concerning the subject matter?

A. Yes.

Q. And can you tell us what he said to you?

A. Well, he didn't—when I presented the figures that I had obtained and I told him that I had learned also that part of the population that Brunswick had there were inmates in an insane asylum, about three or four thousand people, he made no comment about it.

Mr. Seeley: I move that that be stricken.

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There is no evidence—

The Court: So ordered, and the jury is instructed to ignore it.

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DIRECT EXAMINATION (Continued).

By Mr. Hoffmann:

Q. Mr. Lieblich, do you have occasion to go from time to time to Pueblo, Colorado?

A. Yes.

Q. And have you been doing so since your Pueblo center opened in 1960?

A. Yes.

Q. Can you tell us, do you travel back and forth to Pueblo more than once a year?

A. It depends. In recent years I haven't traveled there as much as I did in prior years.

Q. In prior years did you do so?

A. Yes, sir.

Q. And in your traveling to and from Pueblo, do you have occasion to see the centers, other than Pueblo Bowl-O-Mat, located in Pueblo, Colorado?

A. Yes.

Mr. Hoffmann: I would like to have a street map of Pueblo marked, please, as P-5. And I understand that there is no objection. Perhaps we can mark it directly in evidence.

• • •

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The Court: • • •

Q. Can you, Mr. Lieblich, referring to the street map of Pueblo, point out, for the sake of those here, where these various centers are?

A. We have a 40-lane center in the Sunset Plaza shopping center. I am pointing on the map to the general area in which it is located.

The Court: Do you have a red pencil? Maybe we ought to circle it.

Mr. Hoffmann: This is a dark color, but I think it might work.

The Court: That's all right.

A. (Continuing.) I am putting a mark in green. We

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are located right across the street from the State Fair grounds. It is on the intersection of Northern Boulevard and Western Avenue, I believe. I have a green mark to indicate its approximate location.

Q. And will you point out the other centers that you have seen in Pueblo?

A. Yes. As we drive downtown, right next to the river, the Arkansas River that flows through the center of Pueblo, a large shopping center was built on the former dry bed, and in that shopping center, in a downstairs location, is the Bowlero Lanes of 32 lanes. And I have marked that with a Y.

Q. Now, sir, have you designated all of them?

A. No, sir. There are two others fairly close to our 40-lane center. I am going to make a Z. There is a 12-lane center called Payne's Lanes. And that's right here on the map, (indicating).

Also downtown on Main Street, I believe—I will make this an A—there is a 10-lane center known as Park Lanes.

Then, finally, where I am putting a B on the map there is now a 24-lane center called Belmont Lanes. That's in the Belmont Plaza shopping center. I have marked that with a B. That has 24 lanes.

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Q. Are these centers easily accessible to each other?

A. Yes.

Q. Could you point out how one would go from the two farthest points, that is to say, the centers farthest apart, Bowl-O-Mat and Belmont Lanes?

A. When I was out to Pueblo just a month ago, I drove in two ways to get crosstown to Belmont; one way,

you go right through the downtown area, and that took perhaps 12 minutes, to go from our center to Belmont.

There is another way, which is a little bit longer, but perhaps a little shorter in time, by going out Northern Avenue, I believe it is, to Interstate Highway 85, which circles the city, and when you get off at the intersection you are right at Belmont, that's a minute or two faster.

To get to Bowlero Lanes, one has to pass Bowlero in order to get to Belmont when one is downtown. That's a matter of six or seven minutes, depending on the traffic conditions.

And Park Lanes, the ten-lane bowling center, is just a minute or two away from Bowlero.

Q. In other words, none of the centers in the town are farther apart from you than Belmont itself, they are all nearer; is that your testimony?

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A. Yes.

Q. And in time; is that also true?

A. Yes.

• • •

Q. Mr. Lieblich, can you tell us whether or not Bowl-O-Mat to your knowledge has bowlers who use its facilities and who come from points nearer to Belmont than to Bowl-O-Mat?

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A. Yes, the answer is yes, there is a complete interchange of bowlers from one bowling center to the other. As an example, when I was visiting there last month, and on almost every one of my prior visits, I'd almost always visit the other centers with the manager of our bowling center or one of our regional supervisors, and almost in-

variably some of the bowlers in the other centers would come up to our manager or our regional supervisor just to say hello.

I learned that these were bowlers who were also bowling in our center as well.

Q. Now, would the same be true of bowling leagues, as to the individuals you have just described in your testimony; in other words, throughout the City of Pueblo could they come indifferently to one section or another, let's say, with respect to time, that is to say, without regard as to which one is nearer or farther?

A. Yes, a league is made up of individual bowlers, and they come from whatever part of the community in which they may reside.

Q. Now, Mr. Seeley addressed your attention to the downtown area. Is there any real suburban area surrounding the City of Pueblo?

A. Well, I would describe our area as well as Belmont's area as certainly more suburban in character than down-

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town.

Q. If you go, say, to the west, does the population begin to thin out after a while?

A. No, it just ends, because once you leave, once you drive perhaps a mile beyond our center, mile and a half, you get desert and mountains.

Q. Am I correctly describing the direction this way (indicating)?

A. Yes. That would be westward.

Q. Desert or mountains over here?

A. Yes, either west or south, you soon get—west or south, you soon run into desert or mountains.

Q. There is desert or mountains here or here (indicating)?

A. Yes.

Q. Where is the nearest community of any size going in this direction, which is east?

A. Going east, I can't think of any community of any size for many hundreds of miles because as you go east you then get into the great western prairie.

Q. What happens if you go north in our chart here, off the chart?

A. North, sir, you hit Colorado Springs, which is approximately 40 miles due north.

Q. Is that—are there bowling centers which

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exist in Colorado Springs?

A. There are bowling centers in Colorado Springs that service the bowlers in that community.

Q. So that you have a community, if it bowls at all, which must go to one of the centers you described and located on that map; is that right?

A. Yes.

Q. Could you give us the description of Park Lanes; have you ever been in Park Lanes?

A. Yes, on several occasions.

Q. Did you look around it?

A. Yes.

Q. Taken it in your eyes?

A. Yes.

Q. What does it look like?

A. As I just mentioned, I was there a month ago, it looked better on my last visit than it did ten years ago or twelve years ago when I first visited that center.

The owner has done a very nice job in the last year or two years of remodeling his ten-lane center.

Q. Prior to the last two years do you have an idea as to what Park Lanes looked like?

A. It was and still is a very small center. It still has no parking facilities of any type. It is a small

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center. It has a very tiny little area where one can have a—where food is served, very little, snack bar area, I don't recall seeing any cocktail lounge, but I did see a sign that they were selling Coor's beer, I think they probably have a beer license.

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Q. Do you remember how many lanes it had?

A. It has 10 lanes.

Q. Could you describe the center known as Payne's for us?

A. Yes. That has 12 lanes. That hasn't changed at all in the 12 years that I have been visiting in Pueblo.

It is still a very small, ill-kept center. It has no carpeting.

It has a very small snack bar area where the fumes emanate as you open the door, you walk into the center, you smell some of the aroma of food.

It is not at all an attractive center.

This has been more or less in the same condition for the last 12 years.

Q. Now, sir, please describe for us Bowlero, the center which is up, you have designated it as being in this more or less eastern part of the town.

A. Yes. Bowlero has 32 lanes. It is built in a shopping center. It is built downstairs. It is a basement installation.

It has posts throughout it, which is a detriment to bowlers, as the bowler prefers a clean sweep of lanes.

It has a snack bar, it has a cocktail lounge, it

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has a pro shop.

The owner has recently upgraded the facility. He has put in new carpeting.

I think he has changed his masking units to improve the appearance.

It is certainly, comparing it, it is not a really top-notch center compared to many that I have seen throughout the country, and it is surely not one comparable to our 40 lanes in Pueblo.

Q. Do you know whether or not Bowlero is equipped with Brunswick equipment?

A. No, it is not.

Q. What about the other centers you have just testified about; do you know whether they have Brunswick equipment?

A. I really don't recall if Payne's or Park have any AMF or Brunswick equipment. I just don't know, sir.

Mr. Seeley: I will accept what it says on your map there, if you wish.

Q. What about Belmont?

A. Belmont I haven't described, sir.

Belmont does have 24 Brunswick lanes. That center, which opened in 1962, is in a, what we call, a free standing building. It is a separate building.

It is a very attractive center. It has a wide

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concourse. It is nicely carpeted. The equipment is Brunswick equipment. It's been modernized recently with what Brunswick calls an A-2 device to give a speeded up return when the bowler throws his first ball.

It has a very attractive snack bar, and it has a very lovely cocktail lounge.

From all standards, it is really a very first class center.

Q. Now, Mr. Lieblich, your center was originally started 1960; was that your testimony before?

A. Yes.

Q. When was it opened for business?

A. It opened approximately August 1 or August 15. Our league season begins on September just after Labor Day, and we were open for business just before Labor Day 1960.

Q. Would you describe your center in terms of what it looked like and what facilities it had?

A. Yes. I don't say this because it is our center, but in all of the centers that I visited throughout the United States I don't think I have ever seen any one more attractive than our center in Pueblo. It is just a handsome center. Mr. Hanigan and Mr. Stackhouse when they put up the building—

Q. Pardon me.

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Who are Mr. Hanigan and Mr. Stackhouse?

A. These are the gentlemen that I said had come to my office in Paterson. They were the builders. They constructed the building which was leased to us.

It was built on very, very spacious lines. It has a very, very wide concourse. By "concourse," I mean the area where spectators or other people can congregate.

It has a very attractive snack bar area. It has a very handsome cocktail lounge. It has a nursery where we take care of the little children who come with their mothers when their mothers bowl.

It had at one time a billiard room, which has been converted now for other purposes. We use it as a meeting room now for our leagues.

It is very well carpeted, carpeting has been changed several years ago, but it was always very handsomely carpeted.

The air conditioning system is in excellent condition and always has been. We have recently increased the capacity of the air conditioning.

In all respects we are very proud to say that this is one of our finest centers in physical appearance.

Q. In comparison to the others, what other

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center would you say is closest to yours in terms of facilities, number of lanes available, and generally in terms of equipment and attractiveness?

A. In terms of members, Mr. Hoffmann, Bowlero has 32 lanes, and that's the closest to 40.

In comparison to a first class bowling center, the only one that I would say is first class is the Belmont operation which Brunswick now runs across the other side of town.

Q. Does the Belmont center, do you know, have modern Brunswick equipment in it?

A. Yes, it has a very, most modern of the Brunswick equipment.

Q. What sort of pinsetters are in your center?

A. We have original—

Q. In Pueblo.

A. The original pinsetters that were installed in 1960.

Q. And is that—what is the name generally given to that type?

A. I think it was called a A-1 but I—

Q. A-1 describes a series of pinsetters made by Brunswick; is that what you're saying?

A. Those were the pinsetters they were manufacturing in 1959, 1960, 1961, to the best I recall.

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Q. Have Brunswick produced some more modern pinsetters?

A. Yes.

Q. How is that referred to?

A. In about 1963, if my memory is right, sometime there, Brunswick came out with what they call an A-2 pinsetter. And the purpose of that machine was to speed up the return of the ball. In this manner the bowlers could finish their games faster, and the second—I should say that there are two basic shifts of bowlers in our league play at night. The first begins at about 6:00 or 6:30 and the second at 9:00 or 9:30. And the purpose of the A-2 was to speed up the game so that the second league could start 15 or 20 minutes earlier. This is very important to attract more bowlers, because often bowlers don't like to stay out so late at night.

Q. Does the use of the A-2 result in any way in increased traffic through a center?

A. It is supposed to. It is supposed to be more competitive because you can get more leagues. It's an inducement to get leagues on the second shift. And also during heavy times on weekends, when there is a lot of open bowling, it enables one to get the bowlers in and out a little bit faster.

Q. When you say in and out, you mean to complete

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their bowling faster?

A. Yes, sir.

Q. Now, sir, do you know when Belmont first started in Pueblo?

A. Yes, I do.

Q. When was that?

A. It opened in August of 1962.

Q. Do you know who owned Belmont at that time?

A. Yes.

Q. Tell us that, please.

A. It was a corporation, of which a Mr. John Holt, if my memory is right, was the president.

Q. How do you know that he was president?

A. I met him on several occasions.

• • •

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Q. Mr. Lieblich, in the course of your carrying on your business as president of the plaintiff corporation, you testified earlier in this proceeding that you received economic reports from time to time, describing bowling conditions, is that a fair statement of your testimony?

A. Yes, it is.

Q. Did you receive any reports of that character which related to the competitors of Pueblo Bowl-O-Mat in Pueblo?

A. Yes.

Q. Any reports which bore on the financial stability of your competitor, Belmont Lanes, in 1962?

A. Yes.

Q. Tell us what those reports were.

Mr. Seeley: I object, if the Court please. If they are in writing, they should be produced. If they are oral, they are hearsay.

The Court: I will permit him to testify from his own recollection or memory, what he has read.

What is your best recollection? Do you

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understand the question?

The Witness: Yes.

The Court: Answer it.

A. At one meeting with Mr. Holt—

The Court: Don't repeat anything he told you. You are a lawyer.

The Witness: I am trying to be as careful as I can, your Honor.

The Court: All right.

A. At one meeting with Mr. Holt–and I don't recall if it was the first time or the second time that I met him, but it was in the offices of Brunswick in Chicago. Mr. Rudo had arranged for Mr. Holt to meet with him. At that time we were experiencing very serious financial difficulties in the operation of our center, which resulted primarily after Belmont Lanes opened.

And Mr. Rudo had suggested to me that perhaps Mr. Holt would want to buy our center.

The Court: And this year is?

The Witness: This was in 19—it was the latter part, sir, of '62 or the early part of 1963.

• • •

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A. I met with Mr. Holt on several occasions. I don't remember if it was the first time or the second time that I met him. I think it was the first time. It was in the office of the Brunswick Corporation in Chicago. Mr. Milton Rudo, who was then the head of the Bowling Division of

Brunswick, arranged for the meeting. This was because our Pueblo center was in serious financial difficulties. And after many discussions with Mr. Rudo, he suggested that perhaps—

Mr. Seeley: Your Honor, I object to this as not responsive to the question. The question is: What reports did he receive—

The Court: I know, but he is laying a foundation with Mr. Rudo.

What is your best recollection of what he said to you–Mr. Rudo? And he is affiliated

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with your company, right, Mr. Seeley?

Mr. Seeley: Yes, sir. I am not objecting to anything that was said in front of Rudo.

The Court: I know you don't.

A. I told Mr. Rudo that we wanted to sell our Pueblo center.

The Court: What did Mr. Rudo say to you?

The Witness: He suggested that perhaps Mr. Holt's company would buy it. And he arranged a meeting, then, in Chicago between Mr. Holt and me, so that we might discuss it.

Q. When did this take place, sir?

A. It was either in the very late fall or winter of 1962 or in the early part of 1963.

Q. Who was present at the meeting?

A. Mr. Holt, and I, and–I am trying very hard to recollect if any of the Brunswick executives sat with us after the introduction. I just don't remember now. Per-

haps something will refresh my memory. But at this point I just don't remember.

Q. Well, did you at any time have conversations with Brunswick officials concerning Belmont's operations at a loss?

A. Yes, continually.

Q. Tell us about those.

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A. After my discussions with Mr. Holt I spoke with Mr. Rudo. And I told Mr. Rudo then that I was very disturbed and concerned to learn from Mr. Holt that Brunswick was receiving no payments at all from Belmont and Brunswick was insisting that we pay the full amount under our contract.

The Court: What did Mr. Rudo say, if you remember?

The Witness: Well, his position was always that he expected us to pay.

Q. Did you have any conversations concerning this subject matter with any other officials of Brunswick, other than Mr. Rudo?

A. Oh, yes.

Q. Who were those officials?

A. Mr. Saul Jacobson, their executive vice-president at that time. On another occasion Mr. James Urbanik, who became the president of the Bowling Division for a brief period of time when Mr. Rudo was away. On other occasions I spoke about this to Mr. Bensinger, the chairman of the board of Brunswick. I spoke with various members of the Brunswick Law Department about it. And I am sure I mentioned it to Mr. Hanigan on one occasion when I was conferring with him.

Q. Can you give us the substance of the con-

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versations?

A. Well, it was in the general area of the——

Mr. Seeley: If the Court please, I think he should specify who he is talking to.

The Court: If you remember with whom you spoke, on behalf of Brunswick.

Q. You had mentioned first the conversations with Mr. Jacobson.

A. Yes.

Q. Can you tell us about when they took place?

A. It was soon after my return from Pueblo in—I think my conversations with Mr. Jacobson were in the Spring of 1963, about the favoritism to Belmont.

Q. That was approximately 10 years ago, is that right?

A. Yes.

Q. I am not going to ask you to say precisely what he said to you and what you said to him, but can you give us the substance of that conversation, having taken place 10 years ago?

A. In connection with other matters I said to Mr. Jacobson that it was just downright immoral for Brunswick to insist that we pay fully when they had opened, equipped Belmont Lanes when I pleaded with them not to, because of our great financial dif-

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ficulty in our operation, and then not only to insist that we pay in full, but to permit this Belmont company to stay in there without paying a nickel to Brunswick, I said I thought that was absolutely immoral, if not illegal.

Q. Then do you recall what Mr. Jacobson said to you concerning the subject?

A. Well, I think he said to me—I know that Mr. Rudo said to me that the Belmont people were paying. I know Mr. Rudo told me that.

Q. Did Mr. Jacobson make any suggestion to you that he would alter the credit terms existing between——

Mr. Seeley: I object to leading the witness, your Honor.

Mr. Hoffmann: If your Honor please, I recognize the value of the objection, but I point out that he has apparently exhausted his recollection of the conversation with Mr. Jacobson, and I would like to make a suggestion, in the sense that I would with a piece of paper.

The Court: I will permit it at this time.

Mr. Hoffmann: Just to attempt to refresh

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his recollection.

Q. In the course of your conversation with Mr. Jacobson, Mr. Lieblich, was anything said by Mr. Jacobson, concerning the subject matter of the credit terms between your company—that is, Pueblo Bowl-O-Mat—and Brunswick?

A. No.

Q. You mentioned a separate conversation with Mr. Rudo. About when did that take place?

A. After my meeting with Mr. Holt in Colorado Springs.

Q. And where did it take place?

A. In the other bowling center that Mr. Holt's company had in Colorado Springs. I think it was called Circle Lanes.

Q. And would you identify for us who Mr. Rudo was at the time of the conversation?

A. He was the head of the Brunswick Bowling Division.

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Q. And was the conversation concerning the same subject as you have just testified to?

A. Yes, it was, the non-payment of any moneys to Brunswick, by Belmont Lanes.

Q. Tell us, as best you can, what you can remember of the conversation.

A. I remember it very well. Mr. Rudo said they were paying. Later I learned——

Q. By "they," are you referring to——

A. Belmont. Later I learned that that was absolutely untrue.

Mr. Seeley: I move that the latter statement be stricken, your Honor.

The Court: So ordered. The jury will be instructed to ignore it.

Mr. Hoffmann: I take it that that refers to so much as "later I learned that it was untrue."

The Court: Right. The first part will remain.

Q. Did you have any conversation with any other Brunswick officials concerning this subject matter?

A. Bill Blanks was aware of these situations.

Q. When you say, "aware of," as a result of the conversation with you?

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A. Yes.

Q. At about what time, about when in time?

A. All during this period, from late 1962 through the summer of 1963.

Q. And you had a number of conversations with Bill Blanks concerning this subject matter.

A. No.

The Court: Mr. Lieblich, is that Blanks, B-l-a-n-k-s?

The Witness: Yes, sir.

The Court: All right.

A. (continuing) No, not too many.

Q. But more than one?

A. I don't remember, sir.

Q. Is there any other official that you can think of, of Brunswick?

A. No.

Q. If I put it to you that you may have had such a conversation with Mr. Jack Thomas, does that help to refresh your recollection?

A. Well, it doesn't really. I spoke with Mr. Thomas on many occasions in those years, about many things. But offhand, I just don't recall talking to Jack about this problem. But I may have forgotten.

Mr. Hoffmann: If I may, your Honor.

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(Discussion at side bar, off the record.)

By Mr. Hoffmann:

Q. Mr. Lieblich, do you have any recollection at all at this time of having conversations with any other Brunswick officials concerning this subject matter?

A. I don't recall any.

Q. If I were to refresh your recollection by telling you that at a prior hearing you said that, "I had numerous discussions over the years with Mr. Jack Thomas, the vice-president of sales," and then also that you talked with Mr. Hanigan; does that serve in any way to jog your memory?

A. I said before that I did talk with Mr. Hanigan. I had spoken to Jack Thomas on various occasions about putting in or not putting in the installation at Belmont. But I don't think I ever talked to Jack—I may be in error but—about the non-payment by Belmont to Brunswick. If I did, I don't recall it now.

Q. Did you have any problems about continuing your own center in or about 1962? Perhaps I should go at this way. Was Pueblo Bowl-O-Mat making money in 1962?

A. From the day that it opened in August of 1960

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it suffered very staggering financial losses.

Mr. Seeley: I move to strike the adjective, "very staggering."

Mr. Hoffmann: Perhaps I could ask the witness if he prefers to use some other adjective.

The Court: The word "staggering" will be stricken and the jury will be instructed to ignore it. Pueblo suffered losses right, small or great?

The Witness: Yes, sir.

The Court: Yes, to both?

The Witness: Half a million.

The Court: Half and half.

The Witness: Half a million dollars.

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Q. Half a million dollars from what period?

A. From the time it opened.

The Court: Excuse me, Mr. Hoffmann. From August of 1960 to when, Mr. Lieblich?

The Witness: Right to date, sir.

The Court: All right.

Q. Mr. Lieblich, did you have occasion to call the losses of Pueblo Bowl-O-Mat to the attention of Brunswick?

A. On many occasions.

Q. And what was your objective in doing so?

A. The first time that I found it necessary to call it to their attention was in June of 1961, when I learned that there was talk of the installation of a new Brunswick equipped center in Pueblo, Colorado. I called Brunswick in Chicago. Jack Thomas came out to Paterson to talk—

Mr. Seeley: If the Court please, I would like to ask that the running objection which I expressed this morning go to this line of examination.

The Court: So ordered. Yes.

A. (Continuing.) Jack Thomas came out to Paterson to talk with me. I believe that Mr. Rudo—yes, Mr. Rudo was present with him at that time. I took out our figures. And our Pueblo center had been in operation then for nine months, or ten months. And we had already gone through

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the whole of the bowling season. Bowling is a seasonal business. It begins at Labor Day, when our leagues start. Then it peaks off—goes down after the leagues end in about mid-March or April.

So at that point we had already our figures for the great part of the bowling year. And I showed Jack—Jack Thomas and Milt Rudo—those figures. And I showed them what a terrible loss—or what a loss we were incurring then. And I said, "Jack and Milt, if you put in another center these losses will become even greater than we are now suffering."

Q. Did they reply to what you said?

A. They went back to Chicago. And a few weeks later I was very relieved when either Jack called me, or wrote to me, and said they were not going to put in a center.

Q. About when did this happen?

A. That was in about June—it was a few weeks after their conference with me in Paterson. I'd say it was about June or July of '61 when they told me they were not going to put in a center.

Q. And what happened to the Belmont center after that time?

A. In December of 1961 it came to my attention again that there was talk of Brunswick equipping a new center. And I called Mr. Rudo on the telephone. And I said,

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"Milt, what is this I hear about a new center going in out in Pueblo?"

And he said, "Yes, we are going to install a new place."

I said, "I want to come out to Chicago and talk with you and Saul Jacobson, because now we have the first full year of our operation, the second season is now underway, and we are still incurring a very—a loss, and I want to talk to you about it."

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Q. And did that trip ensue?

A. Yes, they invited me to Chicago, and I had a very unhappy discussion——

Mr. Seeley: I move that that be stricken.

The Court: It will be stricken.
You had a conversation or discussion.

The Witness: I had a discussion with Mr. Rudo in which he said they were still going to go ahead and put in that installation.

I stayed on for lunch, and at lunch Mr. Saul Jacobson, who was the executive vice president of the company, came by my table as I was eating in the dining room where the Brunswick executives have lunch, and he tapped me on the shoulder, and he said, "Dan, I understand that you and Milt had had some serious words before lunch."

I said, "Yes, Saul."

He said, "I'd like to talk with you about it."

So we had an additional conference.

Q. Where did that take place?

A. In Brunswick's office, and I tried to explain to Mr. Jacobson what our financial situation was, and then I said to Mr. Jacobson, I said, "Saul, let me try to prove to you that Pueblo still can't take another bowling center."

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He said, "What do you have in mind, Dan?"

And I said, "Milt Rudo said that there are many, many more bowlers in the Pueblo community than we have gotten to bowl."

I said, "Let's undertake a campaign, both of us together, Brunswick and our company, to support this claim that there are more bowlers."

And they agreed that they will do that with us. We talked about a plan and a program whereby for a period of perhaps two months we would undertake—and this was, this was done for the first time ever in a bowling center—an all-out campaign to create more bowlers in the center.

It was called then, and subsequently, the Brunswick Learn-to-Bowl Program.

And we took our director of marketing, Bill Scott, was his name and Bill was going to spend two months in Pueblo, along with some Brunswick officials. And Bill Blanks came out to Pueblo also to get this thing off the ground.

The purpose of this thing was in a two-month period to by telephone, to call every housewife, to call every person they could in the City of Pueblo and invite them into our center to teach them how to bowl. This is what we agreed we would do at that conference between Mr.

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Jacobson and Mr. Rudo.

Shall I continue?

Q. Yes, if there is more to this.

A. Well, what happened after that, I went to Pueblo, Mr. Blanks came to Pueblo, our Bill Scott came to Pueblo.

We hired quite a lot of additional personnel in our bowling center. Brunswick sent their top promotion man, his name was Warren Kelly, very experienced man in promotion, and after several days of discussion and planning as to what would be done, this Learn-to-Bowl Program was commenced.

And I was there while it was getting underway.

When about the second or third day had gone by I learned from Neil Roquemore, who was the Brunswick branch manager, that Brunswick was going to go ahead anyhow and install Belmont Lanes. Immediately, and I

asked Bill Blanks to stay with me at my room in the motel so I could call Milt Rudo in his presence, and I don't think I was able to, I don't think Milt Rudo was available, but I did get Milt Rudo the next day, and I said, "Milt, we are here to conduct this experiment to prove to you and your executives that Pueblo will not support another installation, and when we are two days in the program I learn you are going to do it anyhow."

He said, "Yes, if we don't do it AMF will put it

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in."

I thereupon got a letter from AMF—excuse me, I had already received a letter from AMF some time ago which I gave to Mr. Rudo, that in AMF's opinion the area couldn't support another bowling center.

Mr. Seeley: If the Court please, I think the document should be produced rather than the characterization——

The Court: Do you have that, Mr. Hoffmann?

Mr. Hoffmann: I don't think I have it at the table.

The Witness: I have it.

Mr. Hoffmann: Pardon me, the witness tells me he has a copy of it in his bag.

The Court: Have it marked for identification.

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Mr. Hoffmann: Miss Costello, I'd ask you please to mark as Plaintiff's 6 for identification what appears to be a copy of a letter from Lindsay Crump, assistant vice president, sales, AMF, from Mr. Crump to Mr. Daniel Lieblich, under date of May 31, 1961.

(Exhibit P-6 marked for identification.)

Mr. Hoffmann: Could I have a brief housekeeping conversation with my friend?

The Court: Yes.

Mr. Hoffmann: Your Honor, I ask leave to officially attach to what has now been marked Plaintiff's 6 for identification an internal Brunswick memorandum from Thomas to Mr. R. M. Gebben, under date of June 2, 1961.

The Court: Thomas to whom?

Mr. Hoffmann: Mr. R. M. Gebben. And there are copies indicated to Messrs. Jacobson, Rudo——

Mr. Seeley: Are you marking the second sheet?

The Court: P-6 for identification, consisting of how many sheets?

Mr. Hoffmann: Two sheets. The letter from Crump as described before, and the memorandum, Thomas to Gebben.

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The Court: Have the witness identify the exhibit.

Q. Mr. Lieblich, I show you what's been marked as Plaintiff's 6 for identification, and I ask you if that's the letter from AMF to which you have just referred in your testimony?

A. Yes, this is AMF's letter to me of May 31, 1961.

Q. Was that letter received by you?

A. Yes.

Q. Would you look, please, at the second page of the exhibit for identification?

A. Yes.

Q. The copy of a memorandum apparently signed by J. Thomas?

A. Yes.

Q. Have you ever seen that before?

A. Yes, I have.

Q. Can you tell us, sir, the circumstances under which it first came to your attention?

A. Yes, you gave it to me, Mr. Hoffmann. It came from the Brunswick records which you subpoenaed, apparently, and looked at, and you gave it to me.

Q. Now, sir, this letter from Mr. Crump, that came in response to an inquiry made by you of AMF; is that the sense of it?

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A. Yes.

Q. And without my testifying, and preferring yours, would you read the first sentence?

A. "Following your telephone call about ten days ago——"

Mr. Seeley: I suggest we better have it offered in evidence.

Mr. Hoffmann: I submit that this so far is preliminary to making the offer.

The Court: He is reading from the exhibit, Mr. Hoffmann.

Mr. Hoffmann: Yes, but simply, if your Honor please, to show that it was in response to a telephone call of his that the letter came and then the circumstances of the attachment——

The Court: I will permit him to read the first three lines only.

Mr. Hoffmann: That's all I'd require.

The Court: Mr. Lieblich, please read it.

A. "Following your telephone call about ten days ago I investigated the matter of the proposed new bowling facilities in Pueblo, Colorado."

Q. Was it in response to your telephone call that you received this letter, which has been marked for identification?

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A. Yes.

Mr. Hoffmann: If your Honor please, I now offer into evidence—I think you have the one with the stamp on it——

The Court: Any objection, Mr. Seeley?

Mr. Seeley: Only the standing objection to the line of testimony.

The Court: All right, into evidence, P-6, two sheets, one a letter, the other a memorandum.

(Exhibit P-6 received and marked in evidence.)

Q. Now, again, Mr. Lieblich, referring to Plaintiff's——

Mr. Seeley: I'm having just a little trouble hearing you, Mr. Hoffmann.

Mr. Hoffmann: I am so sorry. I will keep my voice up, Mr. Seeley. I wish it would stay up with the same firm timbre that yours has.

Q. Mr. Lieblich, I show you Plaintiff's 6 in evidence. I address your attention to the first full paragraph after the sentence which you read earlier, having to do with your telephone call.

A. Yes.

Q. Does your recollection tell you about the Pueblo area had about 90,000 people in it?

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A. Yes.

Q. Reference is made in that paragraph to 90,000 people being served by a total of 94 lanes.

Is that also in accord with your own knowledge?

A. Yes. If you add our 40, and Bowlero's 32, and Payne's 10—Payne's 12, and Park Lanes' 10, that would come to, I believe, 94 lanes.

Q. Now, sir, I ask you to read aloud, if you will, the next sentence of the first full paragraph of the letter from the AMF official to yourself, the sentence starting with "It is my understanding."

A. "It is my understanding that the Pueblo area population contains 25,000 people of extremely poor financial means, and that the steel industry in Pueblo is operating at about 60 per cent capacity. These facts alone would convince us that new bowling facilities for Pueblo are not justified. On the basis of those facts we cannot entertain additional new bowling lane business in the area at this time."

Q. Mr. Lieblich, did you ever have occasion to discuss this statement or the sense of the statement with AMF officials?

A. Yes.

Q. And was that statement confirmed by your conversations?

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The Court: I will permit yes or no.

A. Yes.

The Court: Next question.

Q. Now, Mr. Lieblich, going near to the end of the letter, the statement is made:

> "In any event, Mr. Lieblich, you may be assured that we do not consider Pueblo as a justifiable site for a new bowling center installation at this time."

Do you know of your own knowledge whether or not AMF after May 31, 1961, the date of this letter, installed any bowling center in the Pueblo area?

A. No, it did not.

The Court: Do you know of your own knowledge whether they sold any equipment in the area?

The Witness: Yes, I do.

The Court: Next question.

Q. Was that installation after this letter, or before, do you know?

A. No.

Q. What's the answer, "no," you don't know?

A. No, the answer is I do know, they did not sell anything in the area.

The Court: Members of the jury, we will take a short recess.

(Short recess.)

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The Court: Mr. Hoffmann, if you'd be more comfortable, I will allow you to remain seated, if you like.

Mr. Hoffmann: If I can keep my voice up.

Q. Did you receive any information concerning credit arrangements made between Belmont and Brunswick when Belmont originally started?

A. Yes.

Q. What was the nature of that information?

A. You obtained from Brunswick, Mr. Hoffmann, and gave to me to examine, the Brunswick payment cards on the credit arrangements with Belmont Lanes as well as a schedule of all of the payments made by Belmont after it opened for business in August 1962.

Q. Do you have such card with you?

A. I have my records from those Brunswick cards.

Q. Do you have more than one copy of that?

A. No, I don't.

Mr. Hoffmann: May I have it, please?

Q. Mr. Lieblich, would you describe what it is you are holding in your hand?

The Court: Mark it for identification, first.

(Exhibit P-7 marked for identification.)

The Court: Short legend.

Mr. Hoffmann: P-7 simply is one sheet which

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has on top "Belmont Lanes, Pueblo, Colorado," and then some figures.

Q. Mr. Lieblich, can you describe what it is you are looking at?

A. Yes. This is a sheet which I prepared, which I took from the Brunswick ledger cards on Belmont Lanes in Pueblo, Colorado.

Q. What does the sheet show?

A. It shows a contract price, the cash payment, the deferred balance, the finance charge, the amount of the note, and then the record of payments after the establishment opened up.

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Q. All of this data was taken from the Brunswick ledger cards which had been furnished to us pursuant to demand or subpoena in this proceeding?

A. Yes, Mr. Hoffman.

Mr. Hoffmann: May I, your Honor, show it to my adversary? I regret I don't have a copy now.

Mr. Seeley: It corresponds with my information.

Mr. Hoffmann: Thank you.

May I offer Plaintiff's Exhibit P-7 into evidence? I don't think your Honor has had an opportunity to look at it.

The Court: Into evidence, P-7.

(Exhibit P-7 received and marked in evidence.)

Q. Now, by referring to P-7 in evidence can you give us the specifics as shown there concerning the arrangement made between Brunswick and the prior owner of Belmont?

A. Yes.

Q. Would you do that, please?

A. The contract price for the 24 lanes and 24 automatic pinsetters was $352,229.41.

There was a cash payment made of $35,225.41, with an unpaid balance of $317,000. There was then added a Brunswick finance charge of $88,761, and a note for an eight-year period in the total amount of $405,765, and

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the note provided for 64 payments of 6,000 at $340, beginning on October 15, 1962.

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Q. Do you have any knowledge as to whether or not those payments were made?

A. Yes, I do.

The Court: What is the date of that? Do you have a date?

The Witness: Yes, sir. June 5, 1962.

Q. What is your knowledge concerning the question of making the payments by Belmont Lanes?

A. On October 19, 1962, $1,000 was paid. On January——

Q. Pardon me, sir. Is that the first indicated payment?

A. Yes.

On January 10, 1963, a thousand dollars was paid. And on January 15, 1965, $300 was paid.

In the course of the three years the records reflected that $2300 was paid by the owners of Belmont to Brunswick.

Q. And is that payment on a total price of $352,229, is that what you said?

A. No, sir; it is on a total price of $405,765, including the Brunswick finance charge of $88,000.

Q. Again, did you have an occasion to exchange——

A. I can't hear you, sir.

Q. Did you have any occasion to exchange in-

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formation with Mr. Holt indicating to him the status of your payments to Brunswick?

A. Yes.

Q. And what was it that you told him?

A. That we had paid very substantial sums of money to Brunswick on account of our debt to it.

Q. And was this the subject matter of which you complained when talking to Brunswick officials?

A. At some point in time, yes.

Q. Do you know what ultimately happened to the Belmont Lanes?

A. Yes.

Q. What was that?

A. Brunswick took it over and began to operate it itself in April of 1965.

Mr. Hoffmann: I ask Miss Costello to mark as plaintiffs' Exhibit 8 for identification a schedule entitled, "Pueblo Bowl-O-Mat, Inc.," showing income and losses for that center for the period 8-31-61 through 8-31-72.

(P-8 marked for identification.)

Q. I show you what has been marked as plaintiffs' Exhibit 8 for identification. Can you tell us what it is?

A. Yes, sir. It is a record from the profit and loss

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statements of our Pueblo Bowl-O-Mat of its results for each of our fiscal years from the time it opened right through August 31 of 1972. Our company——

Q. I'm sorry. How was this prepared?

A. Our company has a fiscal year which ends on August 31.

Q. And what is the origin of the information which is contained on plaintiffs' Exhibit 8 for identification, where did it come from?

A. The books and records of our company, Pueblo Bowl-O-Mat.

Q. Would you go through the first line for us, please, under the heading, "8-31-61"?

A. Yes. The first line shows the lines—or, as I explained to the jury, the games per lane on an annual basis.

Q. The number is what?

A. For 8-31-61 it is 9,890 lines per lane.

Q. And then the next line, operating cash income, what is the definition of operating cash income used in this exhibit for identification?

A. In a profit and loss statement there are normally two lines of significance, one is what is referred to as the operating cash income and under that we have what is called financial charges. The financial charges include

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interest, depreciation and organization expenses. Sometimes people put interest as a part of the operating expense, but we have generally put them as a financing charge, as we refer to it, as a below the line item.

Operating cash income means the total remaining after—of cash income—after paying all cash expenses, excluding interest payments, and depreciation, and organization expenses.

Q. And are those the items which are next indicated on the line?

A. Yes, sir.

Q. That is to say, interest, depreciation and organization expense?

A. That is correct.

Q. And then you have a bottom line showing income or loss, is that correct?

A. Yes.

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Q. What is the way in which the income or loss is calculated; can you tell us that in terms of the figures which appear on the line under 8-31-61?

A. Well, the income or loss was taken from our books and records, our profit and loss statements. That's what we call the bottom line figure. That was the end result of the company's operations for each year.

Q. Now, sir, what does it show in that year?

A. It shows that for the first year there was a loss of $33,763.

Mr. Hoffmann: Before I go any further, I think it is probably proper for me to request that it go into evidence.

The Court: Does your adversary have a copy?

Mr. Hoffmann: Yes, he has.

Mr. Seeley: I have no objection.

The Court: P-8 in evidence.

(P-8 received in evidence.)

Q. Now, Mr. Lieblich, looking to the bottom line, which you describe as income or loss, I notice that the loss item is in parenthesis, income without parenthesis; is that the legend?

A. Well, there is no profit. Every entry on the bottom line has parenthesis, which indicates a loss.

Q. You anticipated my question. Looking along

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that line, are all of these entries—which are what you call the bottom line—losses for Pueblo?

A. Yes.

Q. That is to say, a loss for each fiscal year starting with the year 8-31-61 and ending with the year 8-31-72?

A. Yes, sir.

Q. And since—another one here, except that the lawyers, yourself and the Judge have copies of this—what is the total given for that loss over the period of years?

A. The total cumulative loss from the opening of Pueblo through the end of our last fiscal year was $511,200.

• • •

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Q. Mr. Lieblich, yesterday afternoon you testified about Plaintiff's Exhibit 8.

I show it to you again.

This is the exhibit—

A. I can't hear you, sir.

Q. This is the exhibit which contains the loss line for each year, 1961 to 1972.

Now, Mr. Lieblich, looking at the fiscal, 8/31/61—

The Court: What exhibit are you using?

Mr. Hoffmann: Plaintiff's 8, your Honor.

Q. The bottom line for Pueblo Bowl-O-Mat is a loss of $33,763, is it not?

A. Yes.

Q. And can you give us some explanation for that loss?

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A. Yes. There just wasn't sufficient games bowled or lines per lane to permit a profit.

The lines bowled were 9,890, and that wasn't sufficient to permit the center to operate at a profit.

Q. This is your first year of operation in your new center in Pueblo; is that right?

A. Yes, first full fiscal year.

Q. Would you look at the next year ending in August 1962?

A. Yes.

Q. And the explanation for that?

A. Same problem, a loss of $25,359, because, again, our lineage per lane was still so very, very low.

Q. Yet in the following year, in 1963, your total loss is less, is it not, it is only $3,637, on lineage which is even less.

Can you explain that to us?

A. Yes, because there was some very significant interest credit given to the company in that year.

The actual operating cash income was lower than the first two years because of the interest credit, the bottom line still had a loss, but was not as great a loss as the prior years reflected.

Q. Then your next entry the following year, 1964, a loss of $40,967.

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The explanation for that, sir?

A. Well, again, the company lost $0,967 that year because again our lines per lane was still so very, very low. It is under 10,000 lines per lane.

Q. And in 1965 a loss of $54,156?

A. Yes.

Q. The explanation, please.

A. Well, our—we did even less bowling in 1965 than we did in 1964, that occasioned the loss of forty thousand—excuse me, sir, that occasioned the loss of $54,156.

Q. And the loss goes up the next year to $75,916; is that right?

A. Yes.

Q. And the reasons?

A. Well, in April of 1965 Brunswick took over Belmont Lanes' 24-lane center in Pueblo, and as soon as they took it over and began to compete with us they began to take away some of the business that we had and had built up.

There were certain giveaways, certain price cuts that they practiced, and as a result we lost in 1966 some of the business that we had in 1965.

Q. When you say "business," you mean bowlers?

A. Yes.

Q. Also leagues; is that right?

A. Well, yes, of course.

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Leagues are composed of bowlers. When I say we lost bowlers, we lost some leagues and some of the individuals who used to do open bowling with us, they went over to Belmont to bowl.

Q. And 1967, any special reason for the loss of $62,187?

A. Yes. In the summer, it was about a year after Brunswick was operating Belmont Lanes and after they had taken some of our bowlers away, they then put in in Belmont something we were unable to afford for Pueblo, and that was the new speeded up ball returns, they were called A-2's, I think.

I described A-2's on a prior day.

After that our manager, Bill Kenny, had a good deal of difficulty in building his business. That's why we lost in 1967, $62,187.

Q. Now, if you look at the bottom line again, you continue to have losses, $61,637 in 1968, 57,738 for 1969, 50,833 in 1970.

Is there any special reason, beyond what you testified to, for those losses?

A. Just that there still wasn't enough bowlers in the Pueblo community to support all of the bowling centers that were there, and we still did way under the 15 or 17 thousand lines that we expected when we opened

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the place in 1960.

Q. If you look at the top line, the lineage per lane, would you be good enough to compare the lineage as it was when you opened in 8/31/61, with 1970, 8/31/70?

A. Yes. In our first year we did 9,890 lines per lane or games per lane, and to get the total number one would multiply that by the 40 lanes we had.

But in 1970 it had gone all of the way down to 7,722 lines per lane.

Q. In this period of almost ten years your lineage did not increase, but sank by at least 1500 lines; is that right?

A. Yes, those are the figures.

Q. Now, sir, in 1971 there is again a loss, but it is a smaller amount; is that right?

A. Yes.

Q. $27,707.

A. That's right.

Q. To what do you attribute the improvement?

A. Well, finally the population in Pueblo had begun to grow just a little bit.

Also all during the years that Bill Kenny was the manager of Pueblo he had worked so hard and we had worked so hard to create more bowlers among school children and among ladies. And we finally began to see by 1971 the

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results of some of these school children whom we did teach to bowl in our centers and in the schools, now finally coming as young adults to bowl and to pay for it.

Q. And then your final tabulation on Plaintiff's Exhibit 8 is for the year ending 8/31/72; is that right?

A. Yes.

Q. And there the lineage has risen again; isn't that so?

A. Yes.

Q. But not up to 1961, when you started?

A. No.

Q. And the loss is, again, somewhat less in 1972, but still a loss?

A. We lost $17,302.

Q. And this operation has persisted from August 1961, that is, your first fiscal report, through August 1972, with a grand total loss of $511,200, as you pointed out yesterday; is that right?

A. Yes.

Q. Can you tell us why you let Pueblo run so long with this loss?

A. Well, for several reasons.

Number 1, there came a time in 1964 when we had guaranteed Brunswick Corporation with a parent company guarantee the payment of all of the obligations of all

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of our subsidiaries, including Pueblo.

Consequently, once that guarantee was given, we had to pay for all of the equipment in full, but once it was paid for, at least that ended for a moment any additional cash that we had to put into it to pay for the equipment.

Also, we looked forward to the day when Belmont would close its doors or competitors might stop their operations.

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Q. And in such case, would you have hoped to prove the Pueblo Bowl-O-Mat position?

A. Considerably.

Q. How would that come about?

A. There's no doubt in our minds, in my mind, through my travel around the country, my knowledge of what happens when a bowling center closes down, if Belmont, if Brunswick was to shut down its Belmont lanes, its 24 lanes, there would be a good deal of the business that's now with Belmont which would come over into our center.

Q. Indeed, the choices were limited, as were pointed out on the map yesterday; isn't that so?

A. Yes. If bowlers are going to—they want to bowl, and Belmont closes down, they just have to use either our facility or Payne's Lanes or Park Lanes or Bowlero.

They are not going to stop bowling.

Q. Bowlero was the one that was downstairs in the ground floor of the building—

A. Yes.

Q. And Payne's and Park's were tiny centers?

A. One has ten lanes and one has twelve lanes.

Q. Now, sir, I want to address your attention to—one moment, please.

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Mr. Hoffmann: Can I have marked for identification as plaintiff's 9 for identification a chart which is entitled, "Pueblo Bowl-O-Mat," and shows various income sources.

(Exhibit P-9 marked for identification.)

Q. Mr. Lieblich, would you be good enough to look at Plaintiff's 9 for identification.

Can you describe what it is for us?

A. Yes. This is a chart which I prepared with the assistance of our accounting department, which reflects the total income by category for Pueblo every year since 1965 to 1972.

And the purpose of it is to relate income from the different categories to a comparison with the bowling revenues to reflect how the net income of Pueblo increases for each additional $1,000 of bowling revenues that it receives.

Q. What was the source for the information provided on P-9 for identification?

A. The books and records of the company.

Q. Is there any other information found on the chart which does not come from those books and records?

A. No, sir, all of it comes from the books and records of the company.

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Q. And the analysis of the records to the extent that thought process is reflected on nine, who made that?

A. I did, sir.

Mr. Hoffmann: I'd like to offer P-9 into evidence, your Honor.

Mr. Seeley: No objection.

The Court: Into evidence, P-9.

(Exhibit P-9 received and marked in evidence.)

Q. Now, Mr. Lieblich, would you be good enough to look down along the line of the entry for 1965 for Pueblo Bowl-O-Mat, the first entry.

You will see the word, "bowling" followed by 168,779.

What does that figure represent?

A. That's the total of the revenues from bowling itself, just the actual revenue charges for the games bowled?

Q. Is that also referred to as lineage?

A. Yes.

Q. When you say, "total," you mean the total for this Colorado subsidiary, Pueblo?

A. Yes, it is only for Pueblo Bowl-O-Mat, in 1965 the total bowling revenues for Pueblo $168,779.

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Q. The next line says, "Shoe rental."

What does that mean?

A. Well, many of our bowlers, our league bowlers particularly, have their own bowling shoes, but many bowlers don't own their own bowling shoes, and when they come to bowl they are able to rent shoes from us at our counter, and the income from the rental of those shoes we have put in this category of, "shoe rentals."

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Q. And the percentage mark is the next column, it says "2 per cent for shoe rental."

What does that mean?

A. It means that shoe rentals were 2 per cent of the bowling revenues in 1965.

Q. And then snack bar, snack bar, $21,494.

A. That is the total of the revenues from our snack bar operation in Pueblo during the year 1965.

Q. And again you have a percentage mark, 13 per cent?

A. Yes.

Q. 13 per cent of what, is that?

A. 13 per cent reflects that the income from the snack bar of $21,494 is 13 percent of the total of the bowling revenues of $168,779.

Q. And then I notice "bar," the next line, $4,704.

Again, that's the income from the bar for 1965; is that correct?

A. Yes.

Q. And the percentage, 26 per cent, would be the bar income in relation to the bowling revenues; is that right?

A. Yes.

Q. That is to say, 26 per cent of the $168,000

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of bowling income; is that right?

A. Yes.

Q. And then "pro shop," $4,744, this is done in the same way, I take it?

A. Yes. The pro shop is the small retail store that we had to sell to bowlers who desire to purchase them bags, balls and shoes.

Q. That reflects 2 per cent of the total bowling income for the year?

A. That's right.

Q. And finally, "Mach."

May we assume that means "machinery"?

A. No, machine and miscellaneous income.

Q. Would you explain what "machine and miscellaneous income" means?

A. Yes. We had candy and cigarette machines supplied to us by concessionaires. And they would give us a certain per cent of the income from those machines when they would collect them.

Also we would offer for rent our lockers, that would be some miscellaneous income. We had pinball machines, games which were owned by pinball machine operators, and they would give us when they cleaned out the machines on a weekly basis a part of that income.

And all that additional miscellaneous income we

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grouped together in this one category called "machine and miscellaneous income."

Q. And that bore a relationship of 3 per cent to the total; is that right?

A. Yes.

Q. Now, then, you have constructed for each year from 1965 to 1972 figures in the same way; is that right?

Q. Is that what the top part of this shows?

A. Yes, all the way down through 1972.

Q. Showing the percentages of revenues reflected by items such as shoe rental, snack bar, bar, and so on, in terms of the percentage of the total bowling revenue; is that the structure of the top part of Plaintiff's 9?

A. That's what the exhibit shows.

Q. And then finally an eight-year total on the right for the whole period, 1965 through 1972; is that right?

A. Yes, sir.

Q. Now, in the space immediately below—excuse me one second, your Honor—

Mr. Hoffman: Your Honor, this testimony might be a little more convenient to follow if I am permitted to pass a copy of this about to the jury——

The Court: You only have got one?

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Mr. Hoffmann: Only one to spare, but I thought I could pass it around so they could see what we are talking about.

The Court: I have no objection to that.

Mr. Hoffmann: I now have two, your Honor.

The Court: Give one to the foreman and the other at the other end—you are speaking about P-9?

Mr. Hoffmann: Yes. Perhaps if the witness and I worked together up here we could have a third one for that purpose.

The Court: All right.

Q. You just testified as to the material on the top part of Exhibit P-9.

Now, in the center of the exhibit there is a net income percentage after cost of goods and labor. What is that designed to show?

A. The purpose of the exhibit is to show net income, and in our bar and in our snack bar, unlike the highly leveraged aspect of our business where every dollar that comes in from bowling becomes net income, in our bars and in our snack bars we have certain items that we must continue to pay, and as business increases we still must have additional costs in our bars, in our snack bars.

Certainly as we sell more hamburgers we have to

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buy more hamburgers, we have to have more waitresses to serve them.

The same is true in our cocktail lounges; we serve more drinks, we have to buy more liquor.

So with respect to our bars and our snack bars, the center shows net income after the cost of goods and labor in the bar for 1965, at the very bottom, we show a 51 per cent profit after cost of goods and labor.

That means that our records reflected that the cost of goods and the cost of labor in our bars were 49 per cent.

Subtracting 49 per cent from 100 per cent, that would give us a 51 per cent cost—51 per cent net income in the operation of the bar.

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The Court: The bar only?

The Witness: Yes.

The Court: 50 cents on the dollar, roughly speaking?

The Witness: Yes.

In our snack bar, one doesn't normally make the same profit as one does in a cocktail lounge. In the snack bar we have done the same thing, taken every year, 1965 through 1972, we related there what our costs are for labor and the goods themselves, and subtracted that from 100 percent. We come up with our net income.

Again, taking 1972, where we show a 21 percent net income in the snack bar, that means that in 1972 the cost of the goods we purchased, the food, the supplies and the labor, was 79 percent.

Subtracting 79 percent from 100 we had a profit of 21 percent on our sales in the snack bar.

The same thing is true of the pro shop. Naturally, when we sell bags, balls and shoes we have to buy them from someone, and the more we buy, we have a very important related cost, so in 1972 where we show a profit of 37 percent it means that the cost of the goods we purchased was 63 percent.

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We have averaged that over the whole eight-year period so we could come up with a very fair, conservative average, of our operations, and for the bar, the net income that we received on an average each year for eight years was 43 percent, in the snack bar it was 15 percent profit, and in the pro shop it was 13 percent profit.

The Court: I have had some xeroxes of the exhibit made for the jury to look at, Exhibit P-9.

Any objection?

Mr. Seeley: No, your Honor.

The Court: I would suggest if there are other charts that you are going to offer into evidence, at the first recess, Mr. Hoffmann and Mr. Seeley, sit down and see if you can agree on them, and then I will have my law secretary see if he can run off some xerox copies.

Mr. Hoffmann: That's most appreciated, your Honor.

Q. Mr. Lieblich, this bottom entry, for additional thousand dollars of bowling revenue, net income increases, would you explain more fully what that means,

A. Yes, sir. Now that we have completed the first part of the chart, we are now in a position to deter-

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mine, and that's what the bottom line reflects, how much our net income increases for every additional one thousand dollars of bowling revenues that would come into our center.

Now, the first entry is "bowling". There I show $1,000. I show 90 percent equals $900.

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What that means, in our experience, for every thousand dollars of additional bowling income that we get, we should make $900. This is what I meant when I said earlier this is a very highly leverage business.

The Court: How about the first thousand?

The Witness: Well, sir, we have certain fixed costs when we open the doors for business. It doesn't matter if we do 9,000 lines per lane or 12,000 lines per lane, our rent is fixed, sir.

The Court: Your utilities, insurance, everything.

The Witness: Yes, sir; all those items, even our labor is essentially fixed.

The Court: All right.

A. (continuing) So, what I am saying is that there can be perhaps a 10 percent additional cost. There may be some additional labor. Of course, if we get a midnight league that bowls until 3 o'clock in the morning, we must have additional employees at our counter to supervise that operation. It means then that we might have the bar open a little longer.

Certainly, if our business increased significantly, our utilities will be a little bit more expensive. The electricity will be a little higher to run the automatic machines so much longer. But in the overall,

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in our judgment, it cannot exceed 10 percent of this additional cost.

And so we have, then, that for every one thousand dollars of bowling that would come in, we would make $900.

The next item are shoe rentals. Up above we have established on the eight year total that shoe rentals are three percent of the total of the bowling revenues. Consequently, the line, "shoe rental," at three percent is $30. That $30 is three percent of the thousand dollars of the additional bowling revenue.

Once again, that $30—every bit of that isn't profit, but again, 90 percent is. If we are renting the shoes—yes, they wear out a little sooner, if we are using them so much more frequently, and that is why we have a 10 percent charge than expense. So for every $30 of additional shoe rental income we should make 90 percent of that, or $27.

The next item is snack bar at 20 percent. Up on the top we have an eight year total and it shows that our snack bar income is 20 percent of our bowling revenue. So now, we show snack bar at 20 percent equals $200. That is 20 percent of the thousand dollars of bowling revenue.

As I said before, that $200 is not all profit.

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I have explained how there is a cost of our labor and a cost of goods. But in the snack bar analysis we show that our profit over eight years is 15 percent on each dollar that we take in. Consequently, we have multiplied the $200

of additional snack bar revenue by the 15 percent profit and that gives us $30 of additional profit resulting from this additional snack bar revenue.

The same procedure is followed with respect to the bar or the cocktail lounge. In the eight year total we have an average of 25 percent. Our bar revenues are 25 percent of our bowling revenues over an eight year average. We have that down on the bottom, bar at 25 percent is $250. That is, of course, 25 percent of $1,000.

Once again, that $250 is not all profit. As in the snack bar, there are the costs of goods and labor, which we have established over an eight year average of 43 percent profit. So we have multiplied the $250 of additional bar revenue by the 43 percent profit and that gives us net income of $108.

The next to the last item is pro shops. Over an eight year average, we have established that our pro shops are three percent of the bowling revenues. Consequently, we have taken three percent of $1,000,

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which equals $30.

Now, again, in the pro shops, our net income is only after we pay for the cost of the goods. And over the eight years our profit was 13 percent. We have then multiplied the $30 of additional pro shop income by our profit of 13 percent, which gives us then $4 of additional net income resulting from anticipated pro shops sales.

The last item is machine and miscellaneous income. Over the eight years that averaged four percent. Four percent of $1,000 is $40.

Here we have taken that at a full 100 percent, because here we have no cost at all. This income is primarily from vending machine operators, people who sell the cigarettes

and candy bars, and the pinball machines. And when they come and empty the machines they give us our part, that is all profit. Consequently, we have multiplied the $40 by 100 percent, and that will give us then $40 of net income resulting from the additional machine and miscellaneous income.

The total, then, for each $1,000 of additional bowling revenue—our net income at Pueblo would increase by $1,109.

Q. Is that for every thousand dollars of additional income at Pueblo—that Pueblo received—

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from bowling—it would also receive $1,109 from these other activities you just mentioned?

A. Not additional, sir.

The Court: Including bowling?

The Witness: Including bowling.

Q. Yes.

A. Yes, sir.

Q. And what you have here, is this based on the actual experience of Pueblo Bowl-O-Mat?

A. Yes, it is.

Q. This is not something you have just cooked up or imagined?

A. This all comes from our books and records, with the analysis I have put down on the bottom.

Q. And, sir, in connection with the activities of Pueblo Bowl-O-Mat, who is directly in charge of the activities, what is his function and name?

A. Well, as the president of the company, it is my responsibility—

Q. I said directly.

A. Yes, sir. The direct person would be the manager of the center in Pueblo.

Q. Who is he?

A. At this time it is Dick Counterman.

Q. For how long a time has he been in charge?

A. Dick has been there now for perhaps two years.

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Q. Who preceded him?

A. Well, Bill Kenny was there from 1962 until just a few years ago.

Q. What does Mr. Kenny do now?

A. Bill is now our midwestern regional supervisor in the bowling division.

Q. In his function as midwestern regional supervisor, does he exercise supervision over the Pueblo, Colorado, Bowl-O-Mat center?

A. He did for a period of some years. In recent years Pueblo was taken out of his area of responsibility. He has other centers in the Midwest. At the present time he does not supervise Pueblo.

Q. But for a period from 1962 to when did Mr. Kenny have an active interest and supervisory power over the Pueblo affairs?

A. I think almost through 1970.

• • •

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Q. We will go now to a discussion of another center, which is the center at Holiday. Will you tell me, please, where Holiday is located?

A. It is in Wappingers Falls, New York, which is just outside of Poughkeepsie.

The Court: What do you call it, Holiday Bowl-O-Mat?

The Witness: Yes, sir.

Q. And Holiday is one of the plaintiffs in this case, is it not?

A. Yes, it is.

Q. Is this a subsidiary, like Pueblo, of Treadway?

A. Yes, it is.

Q. And previously of National Bowling and National Bowl-O-Mat, is that right?

A. Yes.

Q. Can you describe for us what other centers there are in the area of Wappingers Falls and Poughkeepsie?

A. Yes.

The Court: How far from Poughkeepsie is

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Wappingers Falls, do you know?

The Witness: It borders it, sir.

A. (Continuing.) There is a center called Touponse, which I think is in Fishkill. There are two centers north of us, one called Mardi-Bob, and one called Hoe-Bow. A Mr. Hoe owns that center. That is where that unusual name comes from. It is not hobo in the sense of being a bum.

The Court: Is that the name, Mr. Hoe-Bow?

The Witness: His name is Hoe.

A. (Continuing.) North of the Hoe-Bow there is a center in Hyde Park. Then there was, rather close to us until Brunswick shut it down a few years ago, a center

called Dutchess Lanes. And that was the total complement of the Poughkeepsie area, as I best recall it.

Q. Mr. Lieblich, can you tell us when Bowl-O-Mat acquired Holiday?

A. Yes. It was in December, 1960. It was before there was a Bowl-O-Mat. It was one of the companies that I had—it was before there was a National Bowl-O-Mat.

The Court: When did Brunswick acquire Dutchess? Did you testify to that, or no?

The Witness: No.

The Court: When did your company acquire Holiday Bowl-O-Mat?

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The Witness: Yes, sir. It wasn't our company. I formed that in 1960. We bought the stock and the physical assets of a going 36-lane bowling center from a Joe DeLuccia. When we organized National Bowl-O-Mat Corporation in the spring of 1961, National Bowl-O-Mat Corporation received the stock of Holiday Bowl-O-Mat. It was in existence then before the company was organized.

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Q. In December of 1960, did there exist any of the other centers that you have described in your testimony as being in the Poughkeepsie area?

A. Touponse was not built at that time. The Dutchess Lanes was there. I believe that one of Mr. Hoe's centers was there. I don't recall if the other one was there or under construction, or if it was built a year or so later.

Q. Would you be good enough to describe the Holiday center as it exists today, for us?

A. Yes. It has 36 lanes. It is one of our original companies. It did not have Brunswick equipment—it was the only one that did not—because when we bought it Mr. DeLuccia had already installed AMF automatic pinsetters. So it was the only one of our centers that had AMF equipment. It is a very attractive building, which we lease from Mr. DeLuccia. The concourse is not as wide, it is not as attractive as our building in Pueblo. But it is a very, very nice, a first class bowling center. It has a very large cocktail lounge. Perhaps it has the largest cocktail lounge of any of our centers. It has a nursery, where children are, when their mothers bowl. It has a very nice snack bar area. It does not have a billiard area, never did have. I think it is a very first class center. We

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always try to keep it that way.

Q. And the equipment, you say, was AMF. Is it automatic equipment?

A. Oh, yes, it is automatic.

Q. Comparable to the Brunswick A-1 pinsetter?

A. It performs the same function.

Q. Do you have any knowledge of what the Dutchess center looked like while it was in existence?

A. Yes, I visited that on several occasions.

Q. Can you describe it for us?

A. Well, it was an older center. It had a fire at one time and it was rebuilt. But even after it was rebuilt, it still wasn't as nice a center as ours. It was in a downtown location. It had 26 Brunswick lanes. Its snack bar was a very tiny one. Its cocktail lounge was very small. It was carpeted. But being a much older building than ours, it just didn't have the attractive appearance.

It had parking. Its parking was sometimes cramped. On one or two occasions when I visited there, I couldn't

put my car in the parking area. I had to go a block or two away.

Q. And the number of lanes it had?

A. 26, I believe.

Q. Do you know whether your description now is

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a most recent description, do you know what lanes it had initially when Holiday opened in the area?

A. I don't recall now, Mr. Hoffmann.

Q. Do you have any recollection of knowing the owner of Dutchess Lanes during this period?

A. Yes. There was a very active woman in her, I guess, probably late 60's. Her name was Mrs. Ethel Levine.

Q. Does the name LeMar mean anything to you?

A. Yes.

Q. What is that?

A. I believe that was the corporation that Mrs. Levine had organized which operated her bowling center before Brunswick took it away and operated it itself.

Mr. Seeley: May I have the last answer read?

The Court: Repeat it, Mr. Reporter.

(Record read.)

Q. Mr. Lieblich, I want to show you a document, which I will have marked as plaintiff's Exhibit 10 for identification.

(Plaintiff's Exhibit 10 marked for identification.)

Q. (continuing) It bears on the outside cover

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a—

A. I can't hear you.

Q. It bears on the outside cover a legend, "Brunswick"—a B symbol for Brunswick. And it is an Evaluation Report No. 76, Le Mar, Inc., Poughkeepsie, New York.

(Handed to the witness.)

Now, sir, would you be good enough to look at Plaintiff's Exhibit 10 for identification; can you tell us what it is?

A. Yes. It is an evaluation report prepared by Brunswick Corporation at the same time, or prior to, they took over the center from Mrs. Levine and operated it themselves.

Q. Do you know how we come by it?

A. Yes, sir.

Q. Please tell us.

A. You gave it to me after you subpoenaed the Brunswick documents and they turned this over to you.

Mr. Hoffmann: I would like to offer this in evidence, your Honor.

The Court: Mr. Seeley.

Mr. Seeley: May I continue to look at it for just a moment, your Honor?

The Court: Surely.

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(Document examined by counsel.)

Mr. Seeley: No objection.

The Court: Into evidence, P-10.

(Exhibit P-10 received in evidence.)

The Court: Have you finished with P-9?

Mr. Hoffmann: Yes.

The Court: Do you want to collect them and give them to Miss Costello.

(Documents returned to the Clerk.)

Q. Now, Mr. Lieblich, would you be good enough——

A. I can't hear you, sir.

Q. Perhaps I should come a little closer to you. Would you be good enough to look at page 5 of plaintiff's Exhibit 10 for identification.

A. Yes.

Q. Do you notice——

A. Excuse me, sir. I don't have a page 5.

The Court: I have no 5.

Mr. Seeley: I haven't, either.

(Comments off the record.)

Mr. Hoffmann: Your Honor, Mr. Lieblich has the other pages, and I take it that you have.

The Court: I don't know what he has. I have no 5.

Mr. Hoffmann: I am the only one with page 5

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so far, your Honor.

Will you give me a moment for housekeeping?

The Court: Yes. If you want to go back to the files, I will declare a short recess.

Mr. Hoffmann: Thank you.

The Court: A short recess, members of the jury.

(Short recess.)

The Court: All right.

By Mr. Hoffmann:

Q. Mr. Lieblich, you have plaintiff's Exhibit 10 in your hand.

A. Yes.

Q. Would you be good enough to address your attention to page 5,

A. Yes.

Q. And I believe everybody now has page 5?

A. Yes.

Q. Do you notice a heading, "Market" on page 5?

A. Yes, I do.

Q. Can you state whether or not this market would include the City of Poughkeepsie?

A. Yes.

Q. The statement is, under B market, "The popula-

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tion in the designated primary draw area is presently 97,500, with an effective total of 95,400, eliminating 50 percent of the non-whites due to social and economic considerations."

I will ask you to pause over that for a moment. Can you tell us from your knowledge of these matters what is meant by the phrase, "primary draw area"?

A. Yes. The general market area from whence the bowlers would reasonably come.

Q. And would that be such as the area you described a little while ago in your testimony?

A. It would be larger than the area of Poughkeepsie itself. It would cover the whole area——

Q. Would it cover the group of various centers that you described?

A. Yes, all of those would be in the primary area.

Q. Now, sir, when the phrase, "effective totals," is used, do you have knowledge of what that means?

A. Yes.

Q. Would you tell us, please.

A. That we could presume that 95,400 people in the area would be our bowling people, that we could draw on that 95,000 to develop bowlers.

Q. Do you know whether it would include or not

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Vassar girls?

A. I don't think they would be included. Generally, just the permanent population of the area.

Q. What is this evaluation——

The Court: I don't know what the relevancy of that is. What is the relevancy of whether Vassar College women are able to——

Mr. Hoffmann: Well, your Honor, I don't want to go over a question and answer that was objected to earlier in connection with Pueblo, but I point out that it may be possible that these venturesome market reports include just populations——

The Court: College girls?

Mr. Hoffmann: —populations which have within them people who could never conceivably bowl.

Q. Now, Mr. Lieblich, this——

A. I can't hear you, sir.

Q. Well, I can't replace my voice, but perhaps I can stand closer to you. I had over the years a well won reputation which apparently has at this point in life been ended.

Mr. Lieblich, I would like, please, for you to tell us by looking at page 5 what does the last

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paragraph indicate to you, the four commercial competitive lanes in the market; are those the ones you described?

A. Yes.

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Q. Now, there is a reference to the fully automated, eight fully automated lanes for IBM.

Is that the sort of use of bowling that's not in a competitive market?

A. Yes, it is not a commercial operation, we could not consider those IBM lanes in considering the market area.

Q. Do you know what this evaluation report was prepared for?

A. Yes, I do.

Q. Can you tell us that?

A. It was prepared in connection with Brunswick's intended takeover of Mrs. Levine's center for themselves.

Q. As an aid in determination of whether or not it should operate Dutchess; is that the meaning of what you just said?

A. Yes.

Q. Again under "Market," "This is below the estimated proper ratio of 950 to 1 to for this type of market."

Do you notice that sentence?

A. Yes, I do.

Q. Can you tell us, please, what is meant by the "estimated proper ratio of 950 to 1"?

A. Yes.

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I have to explain that. The sentence above says, "This is a lanes to person ratio of 780 to 1. This is below the estimated proper ratio of 950 to 1 for this type of market."

In determining how many lanes a given area can support, over the years there was, and is, a formula that was generally well regarded as to what the population of an area should be to support new bowling facilities.

Now, here Brunswick says in this report, this is a lanes to person ratio of 780 to 1, this is below the estimated proper ratio of 950 to 1.

Now, the generally accepted industry standard in 1959 and 1960, when we first began to acquire and build our bowling centers with Brunswick's cooperation then, was a ratio of 1,400 to 1; in other words, if there are 14,000 people in a community there should be one lane—I don't mean one bowling center, I mean one lane.

And over the years, as Brunswick began to sell more and more bowling equipment, they began to drop this ratio.

Now, in 1964 when this—1965, they say here, this is—the 780 which they recognized then was the lanes to person ratio in Poughkeepsie was below the 950 to 1 which they considered a proper ratio, but that 950 to 1 was still a ratio that none of us as proprietors considered

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at all appropriate to an area to insure a successful and profitable operation.

Mr. Seeley: I move that that be stricken. If Mr. Lieblich doesn't consider it as appropriate, he can say so, but he can't speak for all of the other proprietors.

Mr. Hoffmann: If anything is stricken, may it be the particular phrase "all the other proprietors"?

The Court: So ordered, and the jury is so instructed.

Mr. Hoffmann: But it was not the sense of the order to strike the answer in any other way?

The Court: Just that particular portion.

Q. Looking at that subject, "Market," on page 5, when the statement is made, "This is below the estimated proper ratio of 950 to 1," that's a statement being made by a Brunswick official; isn't that so?

A. Yes, the gentleman who prepared this evaluation report.

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Q. So he says what the estimated proper ratio for the area is, is that the meaning of that, in his opinion?

A. Yes.

Q. And then when he refers to the population in the designated primary raw area, which results in a lanes to people ratio of 780 to 1, it is he himself, is it not, who is saying that the relationship is below the estimated proper ratio?

A. That's right.

Q. What in your opinion, Mr. Lieblich, would be the proper ratio for a community of this size?

A. 1400 should be the ratio, in my judgment.

Q. And on what do you base that?

A. Just general experience I have had over the years, talking with other people, reading reports, I have talked with Brunswick executives over the years, I have seen just recently a Brunswick announcement on 1500 to 1 as a proper ratio.

The Court: Does that apply to all geographical areas, in your opinion?

The Witness: Generally, yes.

Q. Would you let your eye drop down to the bottom of page 5?

A. Yes.

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Q. Do you notice the sentence:

"This is a highly competitive bowling market"?

A. Yes.

Q. Do you agree with that conclusion?

A. Yes, I can attest to that.

Q. What is your basis for saying that?

A. Well, my knowledge of our—the very strong competition among our center at Holiday with Mardi-Bob and Touponse as well as Dutchess, everyone was trying every year to get bowlers to move back and forth from one center to another. It was a very tough competitive market.

Q. And, sir, looking at the evaluation report in which it says that "this is a highly competitive market," and that there exists a ratio of 1 to 780 of the population, is this a report on which you yourself would have invested money and have acquired a bowling center?

Mr. Seeley: I object, your Honor.

The Court: Why?

Mr. Seeley: Because it is a hypothetical question, hypothetical situation. This is not a report which he had acted on or was asked to act on. It was Brunswick's report to itself. And I don't think that this witness' opinion of what he would

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have done has a proper bearing on Brunswick's right to rely and act on that report.

The Court: I will sustain the objection. I will permit a hypothetical, "Assuming you had this figure—"

Q. Assuming that such a report was submitted to you at a point in time when you were interested in investing in a new bowling center, and assuming that the report further had the same statistics given, that is to say, a declaration that it is a highly competitive market, and that there exists lanes in the ratio of 1 to 780 of the population, would you under such circumstances have invested your money?

A. Never, it would have been disastrous business judgment.

Q. Can you give us the reason for that?

A. Just couldn't possibly support the investment. It had to be a loss.

Q. Would you be good enough to look on page 6, under the heading "Lease"?

A. Yes.

Q. Perhaps you'd be kind enough to read that aloud to us.

A. Yes.

"The landlord is presently balking at the Brunswick

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lease offer of $26,000 gross annually, plus 10 per cent of all gross income over $170,000. This guarantees the landlord approximately $3,500 annually over building costs.

"This building was formerly leased at an annual gross rate of $36,000."

Q. Do you have any information as to whether or not the Brunswick lease offer of $26,000 gross annually, et cetera, became accepted by the landlord?

A. Yes.

Q. What is your basis for that?

A. Documents that we received from Brunswick, and I believe also it showed in their profit and loss statements from operating Dutchess, they paid $26,000 a year rent.

Q. Are you familiar with the premises described in the report?

A. Yes.

Q. You have seen it on different occasions; that was your testimony?

A. Yes.

Q. That's the premises of LeMar or the Dutchess Lanes; is that what we are talking about?

A. Yes.

Q. Now, sir, what was the center like, not just in terms of what you described as its interior, but in

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terms of whether or not it was a readily rentable building; what kind of building was it?

A. It was a free-standing structure.

Q. Was it a structure designed for use as a bowling center?

A. Yes.

Q. Is there a phrase that describes that kind of structure?

A. Yes, sir.

Q. Among real estate people?

A. Yes.

Q. For yourself as well?

A. Yes.

Q. What is that phrase?

A. It is called single purpose.

Q. What is the meaning of single purpose building?

A. Well, generally, without some additional capital investment for renovation or restoration of the premises, generally suited for that one purpose.

Q. Now, then, does it follow that if Brunswick had not accepted this lease, that the landlord would have a piece of property which was empty and usable only for a bowling center?

A. Not necessarily, no.

Q. Why not?

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A. Well, in my experience, we have had a building, bowling building, that was sold to a bank, and they converted it for other uses.

I know of many former bowling establishments that are used as furniture stores or discount centers.

Q. But before that would happen it would have to be renovated in some way, would it not?

A. Yes.

Q. Generally speaking, there is a large open interior area where there are lanes, isn't that so, in a bowling area?

A. Yes.

Q. Was that also so at the Dutchess Lanes?

A. Yes.

Q. Do you know of any ready use to which such a center could be put other than bowling, and without renovation?

A. No.

Q. Mr. Lieblich, again in this report, under the heading "competition—"

A. What page?

Q. Page 5, last paragraph.

A. I see it.

Q. "There are four competitive commercial lanes in this market area."

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Now, these are the ones you described, are they not?

A. Yes.

Q. Can you list them again so we don't forget?

A. Ours would be one, there are Touponse, Mardi-Bob, Hoe-Bow, and I believe that they would consider here Hyde Park, rather than Touponse, which was below us, those would be the four.

Q. Do you have—are you able to describe the locations of these centers in terms of distance apart or time consumed in driving one from the other the way you did yesterday in relation to Pueblo?

A. Yes. On page 15 of the report it gives the distances, and I would say from my own knowledge, this is essentially correct, it shows Hoe-Bow as three miles from Dutchess Lanes, and Hyde Park was six miles from Dutchess Lanes, Mardi-Bob was two and a half miles from Dutchess Lanes, and our Holiday Bowl-O-Mat was eight miles from Dutchess Lanes.

Q. Now, these are descriptions given by Brunswick in its evaluation report; is that right?

A. Yes.

Q. And do you concur; are they accurate?

A. Yes.

Q. Now, sir, in terms of time, have you any way of telling us whether all of these centers are reachable

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one from the other within, say, 20 minutes?

A. Yes.

Q. That is, in an automobile, of course, not on foot?

A. That's true.

Q. And are there good interconnecting roads in this area?

A. Yes. The furthest apart is ours from Dutchess, but probably it is probably the faster to get to because of the fine highway that was built, we are right on Highway 9, and there was a new interconnect which went right into downtown Poughkeepsie, and that's where Dutchess was located, in downtown Poughkeepsie.

So they are all within 15 minutes really of each other.

Mr. Hoffmann: Miss Costello, would you be kind enough to mark as Plaintiff's Exhibit 11 for identification a one-page summary headed "Holiday Bowl-O-Mat," showing a breakdown of figures for the years 1965 to 1972?

(Exhibit P-11 marked for identification.)

The Court: Would you look at it, Mr. Seeley, and let me know whether there is any objection to it? It is comparable to P-9 except it involves Wappingers Falls, is that correct?

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Mr. Hoffmann: Yes.

Mr. Seeley: No objection.

The Court: P-11 into evidence, and we also have copies made for the jury.

Mr. Hoffmann: Right here.

(Exhibit P-11 received and marked in evidence.)

Mr. Hoffmann: May the record reflect that this was computed by the witness from records in a manner similar and from similar records from those described in connection with the similar exhibit for Pueblo?

The Court: How do you like the service?

Mr. Hoffmann: Excellent. We're most grateful.

By Mr. Hoffmann:

Q. Mr. Lieblich, would you look now at Plaintiff's Exhibit No. 11?

A. Yes.

Q. This is designed to do the same things that the similar exhibit in relation to Pueblo was designed to do; is that so?

A. Yes.

Q. What is that?

A. This shows that at our Holiday Bowl-O-Mat for each $1,000 of bowling revenue our income would increase by $1,328. And the same procedures were applied here as

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they were in Pueblo.

The differences, of course, are the variances, the variances from the books and records of Holiday.

This reflects our eight-year experience in Holiday in our bowling revenues, our shoe rental revenues, snack bar revenues, bar revenues, our pro shop revenues, our machine and miscellaneous revenues, and our experience of profit in running the bar and snack bar, and the bottom is the same analysis as I described earlier with respect to Pueblo.

Q. Now, this is an experience, is it not, based upon what has actually happened in Holiday?

A. Yes.

Q. And the last figure on the bottom of the page is $1,328?

A. Yes.

Q. At least looking at it from top to bottom that's the last figure on the page.

And again, the heading is "For each additional $1,000 of bowling revenue, net income increases"?

A. Yes.

Q. Now, is it fair to say that for each such $1,000 the net income increases $1328; is that the meaning of it?

A. Yes, or if there was 10,000, it would be $13,280.

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Q. If it was 100,000?

A. 132,800.

Q. And that experience factor is in this chart for eight years; is that not so?

A. Yes.

Q. The full history of Holiday?

A. Yes.

The Court: Why is your bar figure so high?

The Witness: As I mentioned earlier, we have at Holiday the largest cocktail lounge that we have in the whole chain. We have entertainment there several days a week.

Q. Is there any real difference, Mr. Lieblich, that's discernible to you between this experience and the Pueblo experience in the sense that one function produces a good deal more revenue than another?

A. Only to the extent that, as his Honor just pointed out, that our cocktail lounge revenue is much higher in Holiday.

As I said to the jury earlier, we have in Holiday the largest cocktail lounge we have in our whole chain. It is a very elaborate room, and we have entertainment there three or four nights a week, and on some occasions we have had it as many as five nights a week.

Mr. Hoffmann: May I have marked as P-12 for

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identification a sequence of numbers under the heading of "Holiday Bowl-O-Mat," purporting to show income or loss?

(Exhibit P-12 marked for identification.)

• • •

Mr. Hoffmann: I will follow your admonition.

The Court: Now that the jury has it, into evidence.

(Exhibit P-12 received and marked in evidence.)

Q. Mr. Lieblich, would you be good enough to look at the first column, "Nine months, 8/31/61."

Does that represent a fiscal period of the history

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of Holiday Bowl-O-Mat?

A. We acquired this in December 1960, and since our fiscal year is August 31, this would reflect the nine months that it operated under our operation.

Q. And then the next year is the first full year; is that right?

A. That's right.

Q. That's the one ending 8/31/62?

A. Twelve months. Each year thereafter, the full twelve months.

Q. Now, going down the column, again, you have in this nine-month period, "Lineage per lane 10,831."

What does that entry mean?

A. The actual games bowled per lane at Holiday during that year.

Q. And then——

A. To get the total you multiply it by 36 lanes. We have 36 lanes, but that's per lane.

Q. And then you have cash, "Operating cash income."

A. Yes.

Q. Would you explain that phrase, please?

A. Yes. That was the difference of the cash receipts and that which we had to pay out for our bills, except on the interest.

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Q. And then "Interest" for $8,011?

A. Yes.

Q. Can you state what that figure is, that's interest on what kind of property?

A. That was interest on whatever debt we owed, that the subsidiary had, equipment obligations of wherever the interest might have been during that year.

Q. That would include equipment obligations?

A. Yes.

Q. That would include the pinsetters and the lanes?

A. No, it was AMF's, so we didn't—AMF, unlike Brunswick, leased the pinsetters, but we did purchase from Brunswick and from AMF the lanes.

There came a point in time also where AMF did make available to its customers on a sale basis for a very short period of time the purchase of their pin spotters, and we did in Holiday at some point in, I believe, 1962, when AMF made the offer, we bought from AMF 24 of the 36

lanes that we had leased and we have continued to lease since that date the additional 12 lanes in the center.

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Q. And then you have a figure for depreciation beneath that.

Is depreciation an item which you—is it computed here in the way that you explained it in the past?

A. Yes, it would be a little bit different because we have AMF equipment rather than Brunswick.

Q. But does it reflect the expectable life of the equipment?

A. Yes.

Q. And then, sir, organization expense.

A. Yes.

Q. What does that refer to?

A. When a company is first organized there are some additional start-up costs, legal fees, accounting fees, that sort of thing. That's what is called organizational expense, and it is normally written off over the first five years of the life of the company.

That's why after five years that organizational expense trails off to zero.

Q. Then the bottom line here, "Income," and then, "Loss," in parenthesis, if you would run your eyes across the figures for 1961, 2, 3, 4, 5, 6 and 7, those are positive income; is that right?

A. Yes, those are the years of profit.

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Q. Then, 1968, 9, and 1970, and the entry is in parenthesis; is that not so?

A. Those are years in which we had losses.

Q. Now, sir, going through this as we did with Pueblo, can you give us an explanation as to why the profit figure became losses in the 1968 fiscal returns?

A. Yes, I think I can, sir.

Holiday was generally a profitable operation. In—the profit began to drop off considerably between 1964 and 1965. We had a profit in 1964 of $38,499. The next year our profit dropped to $17,140.

It was in 1965 that Brunswick took over and began to operate the Dutchess Lanes. Once again, as in Pueblo, their competition was more severe than under the direction of Mrs. Levine when she operated Dutchess Lanes.

Finally, then we went from a loss—from a small profit, to a very significant loss.

In 1968 we lost $39,000.

In 1969 we lost $51,000.

Then in 1970 our loss dropped considerably, to $27,000.

And then we began to make a nice profit again, small profit, in 1971, and last year a very consider-

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able profit. The reason that the last two years have shown this very dramatic reversal is that Brunswick, after operating Mrs. Levine's center for four years finally shut it down. They shut it down in 1969.

And the result is rather clear in our figure. The first year after Brunswick shut it down our loss dropped from 51,000 to 27,000. It was shut down so late in the year that we weren't able to organize some of the leagues that we might have had had it been shut down six months before that.

So really, 1971 was the first good year where we were able to see the benefit of having Dutchess Lanes out of

business. And we improved from a $27,000 loss in 1970 to a small profit of $1800 in 1971.

Last year, August 31, 1972, reflects a fine profit of $47,000, and the year now underway shows a much more positive improvement even over last year.

The Court: Population conditions stationary as far as the operation for your Bowl-O-Mat were concerned?

The Witness: Essentially so, yes.

The Court: Entertainment, etc.?

The Witness: Yes. There was a year or so where the Poughkeepsie area was a little depressed, IBM moved some of their people from

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one of their plants, but it was essentially identical.

I think the population in the last two years has begun to improve a bit in the Poughkeepsie area.

Q. Mr. Lieblich, can you tell us whether or not the other bowling centers to your knowledge who were located in the same market experienced any losses after Brunswick took over Dutchess; do you have any knowledge of that?

A. No, I don't.

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[392]

Q. I would now like to shift your attention, if you will, Mr. Lieblich, to the center which is operated under the name of Paramus Bowl-O-Mat. Would you please describe the market area in which that center is to be found?

A. Yes. This is easier than talking about Poughkeepsie or Pueblo, since this is my home area. I am sure the jury, too, knows the Paramus area. Our center opened in Paramus——

The Court: What is the name of it?

The Witness: Paramus Bowl-O-Mat. Actually, Garden State Paramus Bowl-O-Mat, Inc., but we

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call it Paramus Bowl-O-Mat.

A. (continuing) This was the second bowling center with which I had any direct connection. And it opened in the summer of 1958 in the large shopping center that R. H. Macy was then constructing, now known as the Garden State Plaza Shopping Center. That's where Bamberger's has its big store, and Gimbel's has a big store. It is located right at the intersection of Route 4 and Route 17 in Bergen County. It is one of the largest shopping centers in the United States.

We do not have a free standing building. I have used that word before. A free standing building is a separate structure. There we are in a downstairs location. You have to go down a flight of about 10 or 12 steps.

We have some columns, not many. It is not as—I think I have answered the question.

Q. This center is a plaintiff in the proceedings, is it not?

A. Yes, it is.

Q. And it is one of the wholly owned subsidiaries of Treadway?

A. Yes, it is.

Q. The same as the others you described. Can you tell us when it became a subsidiary of—not

[394]

Treadway then, but, of course, the predecessor of Treadway?

A. It became a subsidiary of National Bowl-O-Mat when National Bowl-O-Mat became a public company in the Spring of 1961.

Q. Did you mention that there were some 36 lanes?

A. Yes, I did, 36 lanes, and 36 automatic——

Q. And these pinsetters are of Brunswick make, is that your testimony?

A. Yes, these were purchased from the Brunswick Corporation.

Q. Are they of the A-1 type?

A. Yes.

Q. That is to say, the original automatic pinsetting equipment which you described yesterday in your testimony?

A. Yes.

Q. And the approximate cost of each pinsetter, how much was that?

A. $8,100.

Q. And were the lanes also purchased from Brunswick?

A. Yes, they were.

Q. And how much was the cost of those?

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A. Approximately $4500 per lane, times 36.

The Court: What did you say at the end?

The Witness: Times 36.

The Court: How much was each lane again?

The Witness: About $4500, and the pinsetters, $8100.

Q. Coming back now to the competitive market in which you say you function, what was the nearest center to Bowl-O-Mat, Paramus?

A. When we opened in 1958?

Q. Yes.

A. I think there was just one then in being. Frank Esposito, a very well known building proprietor in New Jersey, and throughout the country, had, and has, a very successful operation on Route 17, just about two miles north of us.

The Court: What do you call it, sir?

The Witness: Paramus Bowl.

Q. And thereafter, when did your next nearby center spring into being?

A. Well, as bowling became so popular, in the late 1950's and the early 60's, quite a large number of additional centers came into being. I can think of Fair Lawn Lanes, which has 32 lanes——

Q. Pardon me. How far away is Fair Lawn?

[396]

A. It is the next community. Paramus and Fair Lawn border each other.

Also, in Fair Lawn, right on Route 4, there was a place called Route 4 Bowling. That has about 16 lanes, if I remember properly.

Then there was Interstate Lanes up in Ramsey, which is a little further away. That has 40 lanes.

The Court: Wait a minute. Isn't Ramsey quite a distance from Paramus?

The Witness: Well, it is not that far, sir, on Route 17. It's about 15 minutes away on the highway.

A. (continuing) Between Ramsey and ourself, and Mr. Esposito's center, there is a Club 300.

Going a bit around us——

The Court: How many lanes for Club 300?

The Witness: I think it is 40, sir.

A. (continuing) Around us in Hackensack, there's a place called Bowler City. That has 50 lanes.

In East Paterson there is a place called Martone's Lanes. And I think that has 24. I have records to be sure, but that is my present memory.

Then, also in our competitive area there are 40 lanes in Lodi, called Lodi Lanes.

I think I have covered all of the centers that I think are in our competitive area.

[397]

Q. Thinking of what you call competitive area, can you tell us, in terms——

A. Oh, excuse me, sir. I forgot one other one, which is only a quarter mile away from us. And that's Ten Pins. That is one of the ones Brunswick——

Q. Called Ten Pins on the Mall?

A. On the Mall. That is located in the center that Stern Brothers built. That's another very large shopping center right next to the Garden State Plaza shopping center.

The Court: How many lanes?

The Witness: That has 36.

Q. Thinking of these centers in terms of time by automobile between them, could you describe the outer limits of time to go from one center to the other?

A. Yes, sir. I think Judge Whipple pointed it out—Ramsey is probably the furthest away from Paramus in miles, yet in time it is not very far, because you can just go right up Highway 17. I would say that it is only 15 minutes to get from our place to Ramsey, depending on traffic, of course.

The Court: What geographic area do all these lanes encompass, the nine lanes?

The Witness: Probably, sir, a radius——

The Court: Ten miles, fifteen?

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The Witness: I would say so, sir. It is so hard to pin down because there is a very large industrial park, as an example, in Fair Lawn, where Nabisco has a large plant, and other people. It is just one area. It could be that the Nabisco league might be bowling up in Interstate and Ramsey, or could be bowling in our center, or Frank Esposito's. It is just one metropolitan complex, sir.

Q. Now, if I understood your testimony, this was a center you acquired from someone else, is that right?

A. Well, it is one that I have organized myself with my——

Q. Then through the process of corporate change, it was acquired, was it not, by the National Bowl-O-Mat organization?

A. That is correct.

Q. Did you at the time when NBO acquired National Bowl-O-Mat have any experience in running the center, had it been running for a while?

A. Oh, yes, it was running from 1958 until the spring of 1961, when National Bowl-O-Mat became a public company.

Q. Can you tell us whether or not it had been a profitable operation?

A. Very profitable.

[399]

Q. And was the same true after National Bowl-O-Mat acquired it?

A. Yes, sir; it remained quite profitable for several years.

Q. Did there come a time when, in that area that you described, National Bowl-O-Mat sought to acquire any additional bowling centers?

A. Yes.

Q. Can you tell us when that happened?

A. Yes, there were two centers that we sought to acquire. It came to our attention in 1962 that another center was going to go into the Stern Brothers shopping center. That's the Bergen Mall. And after some discussion with Brunswick I thought we would be better off if we had that center, so we could run it in conjunction with our 36 lanes.

And we had several discussions. I hired architects. And we were preparing to acquire that for an opening in 1963. For certain reasons that didn't materialize.

Then on another occasion, after Brunswick took over Fair Lawn Lanes in 1965, at the bankruptcy sale of American International Bowling Corporation—that's when Brunswick first acquired about 30 centers all at one time—I spoke with Mr. Milton Rudo of the Brunswick Corporation, expressing our interest in acquiring Fair Lawn Lanes, since it

[400]

was so close to my home in Paterson and our other center. I wrote to him on another occasion about Fair Lawn Lanes. But apparently they didn't want to sell it. And that was the end of the discussions.

I think those are the only two centers. At one point the owners of Eclipse came to my office to see if we would like to buy their center, but I don't think I ever had any serious discussion. I think at one time I saw the figures on Lodi Lanes, when they were in some financial difficulties. But we didn't acquire that, or talk further about it.

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[401]

Q. Mr. Lieblich, before the recess you mentioned the centers which were competitive with Paramus Bowl-O-Mat; is that right?

A. Yes.

Q. To your knowledge are any of those centers owned or operated by Brunswick?

A. Yes.

Q. Would you tell us which ones they are?

A. Yes. In the Paramus area, Brunswick Operating Division has been operating for quite a few years about four different centers. One is Fair Lawn Lanes, with 32 lanes, it's been operating that one since early 1965.

Another one they have been operating since early 1965 is Interstate Lanes up in Ramsey.

For the last few years they have been operating—

[402]

when I say "they" I mean Brunswick Operating Division—the center just a quarter of a mile away from us, Ten Pins on the Mall, in Paramus.

And also for the last few years they have been operating the 40 lanes at Lodi Lanes.

So there are four centers in the Paramus area that Brunswick operates competitively to our center in Paramus.

The Court: How many in Ten Pins?

The Witness: 36.

The Court: Interstate?

The Witness: 40.

The Court: Lodi?

The Witness: 40.

Q. Mr. Lieblich, was Ten Pins previously owned by someone else, do you know?

A. Yes.

Q. Who was that?

A. A fellow that I knew by the name of Tommy Granatelli. Tommy had another partner, but I forgot the other partner's name, but Tommy had almost all of the money involved in its ownership.

Q. Did you yourself have any interest in that center?

A. Yes.

Q. In what way, sir?

[403]

A. Well, Tom Granatelli called me, and then his accountants called me and conferred with me, as to our interest in taking over his center after it had gotten into a good deal of financial difficulty.

I sat with Tom and his accountants, and he showed me all of his figures, and as a result of my looking at those figures I decided that we couldn't possibly make a go of the operation of Ten Pins on the Mall. That was the end of our discussion.

Q. What underlay your conclusion that you just described that as result of looking at the figures you decided you couldn't make a go of Ten Pins on the Mall; what was it that you saw that led you to that conclusion?

A. They had 36 lanes in Ten Pins on the Mall, and we had 36 lanes, we each had Brunswick equipment, we are both in shopping centers, we both had downstairs locations, I knew that we were doing very poorly, and Mr. Granatelli's company was doing just as poorly, and he showed me his figures, and they were unable to make their payments to Brunswick.

I just couldn't see how it could be turned around to profit in those years. I think these conversations were during 1965 and 1966.

Q. You said that it was acquired by Brunswick.

[404]

Do you know when that happened?

A. Yes, I think that Brunswick began to operate Ten Pins in about 1968. I think about 1968.

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[405]

Mr. Hoffmann: Your Honor, would you be good enough to have the Reporter read the last question.

The Court: This is the wrong reporter.

Mr. Lieblich testified that he was contacted by Mr. Granitelli, to sell the place, but he turned it down, "they were doing poorly and we were doing poorly." It happened during 1965 and 1966.

I think that was roughly your testimony.

The Witness: Yes, sir.

By Mr. Hoffmann:

Q. And I think I asked the final question, which was: If you had knowledge, when did Brunswick acquire it?

A. Yes. In either 1968 or 1969.

The Court: You are talking about Fair Lawn, right?

The Witness: No, sir. Ten Pins on the Mall.

The Court: Yes.

Q. In the same marketing area, there were

[406]

two other Brunswick centers, is that right, one Fair Lawn—Fairlanes—and one Interstate.

A. There is a third. There is also Lodi.

Mr. Hoffmann: Will you please mark P-13 a Bowl-O-Mat Paramus, indication of income and loss.

The Court: P-13, Paramus Bowl-O-Mat.

(Exhibit P-13 marked for identification.)

Q. Mr. Lieblich, I show you what has been marked as plaintiff's Exhibit 13 for identification and will you describe what it is, please.

A. Yes. Its heading is Bowl-O-Mat Paramus. This is the result of the eight years of experience in the operation of Paramus from 1961 through August 31 of 1972. It shows our lineage per lane, our cash income, interest, depreciation, organization expense, and finally the profit or loss of the company for each year.

Q. And this exhibit for identification is prepared in the same way as similar exhibits in relationship to Holiday and Pueblo, which you described earlier today were prepared, is that your testimony?

A. Yes, sir; it all comes from our books and records.

Mr. Hoffmann: I offer it, your Honor,

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into evidence.

Mr. Seeley: No objection.

The Court: P-13 into evidence.

(Exhibit P-13 received into evidence.)

The Court: Do you have copies for the jury?

Mr. Hoffmann: Yes.

(Exhibit distributed to the jury.)

Q. Mr. Lieblich, can you, by going across the last line, which represents income loss, indicate the years in which this was profitable, this center?

A. Yes.

Q. What were they?

A. In 1961 Paramus had a profit of $37,746. In 1962 it had a profit of $17,419. In 1963 it had a loss of $3,922. In 1964 it had a profit of $14,840. In 1965 it had a loss of $1,644. And beginning 1966 the losses began to increase, so that in '66 the loss was $39,894. In 1967 it was $48,649. In '68 it was $63,857. In '69 it was $55,409. In '70 it was $55,153. And in '71 it improved to a loss of $44,536. And still further improvement was shown last year, but we still lost $10,542. So, after the successful initial profitability of the company, its cumulative loss in this period is over $250,000.

[408]

Q. It lost consistently from '65 on to the present, is that so?

A. That is correct.

Q. Do you have any explanation for why, after showing some profit in '62, a loss developed in the year '63?

A. Yes. Our lineage decreased from '62 to '63. That was the year that Ten Pin Bowl was operating for its first full year, if my memory is correct.

[409]

Q. And then your year of '64, unlike '63, shows a profit. Can you explain that for us?

A. Yes. That was not a result of better bowling, because the lineage per lane decreased from 10,570 in '64 to 9,355 lines in '65. The reason for the swing—excuse me. I have used the wrong figures.

Q. You are looking at the——

A. Yes, sir. The difference between '63 and '64. Lineage did not increase. So the improvement was not as a result of more bowling. In 1963 we did 11,250 lines per lane and in 1964 we dropped to 10,570. The reason, then, for the difference was—I think it was that year that we received some reduction in rent from the R. H. Macy Company, that still owned the shopping center, and because of the financial difficulties that we were in, I met with one of their senior vice presidents and we were able to get a rental reduction.

Q. Now, if you would be good enough to look at the lineage figures, starting in the following year, in '65, they all seem to go down, is that correct, until you reach 1971?

A. That's right.

Q. Now, sir, to what do you attribute this drop in lineage?

A. Well, several factors. A very primary one was the

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fact that beginning in 1965 Brunswick began to operate

Fair Lawn Lanes and Ramsey competitively to us. I think Lodi Lanes was a late opener. And that probably had some effect, too. Certainly the operation of the Brunswick centers was tougher competition for us. Again, they were able to offer certain inducements, which we couldn't do. And the first thing——

Mr. Seeley: Your Honor, I would like to strike that as a conclusion. If he cares to name the things they did, all right, but broad——

The Court: It will be stricken and the jury instructed to ignore it.

Develop it.

Q. You said that they were able to offer certain inducements, Mr. Lieblich. Will you tell us what those inducements were?

A. Well, I recall specifically after Brunswick got in the operating business in 1965, during that summer they had a very widespread program of inducing—in order to induce young people to come into the centers to bowl. And they had a very cut rate price on bowling. This was not just in Paramus. I remember visiting Bill Kenny in Pueblo. I picked up in the Brunswick center in Pueblo the same leaflet that I picked up in the Brunswick center at Fair Lawn, and it was a very reduced price, almost

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40 or 50 per cent under what we were charging the young people to bowl at that time. That's the sort of inducement that I recall now that affected us.

Q. Can you think of any others?

A. I think also in that summer—I may be in error—they embarked upon an important promotion to send people to Europe if they bowled in Brunswick centers.

And all the Brunswick centers around the country were participating in that.

Q. Did you offer any comparable incentives for bowling, comparable to a trip to Europe?

A. No, sir; that would have been too expensive for us to have funded.

Q. Now, sir, do you know offhand how many lanes were under Brunswick or BCOD control in the Paramus market?

A. Yes. I made a list of all the lanes and I gave that to you, Mr. Hoffmann.

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Q. Is this the list to which you refer?

A. Yes.

The Court: P-14 for identification.

Mr. Hoffmann: It is a sheet entitled "Paramus Market," with a heading entitled "Number of Lanes, Name of Centers, Distance from Bowl-O-Mat." There is also other information on it.

(Marked Exhibit P-14 for identification.)

Q. Can you tell us how this was prepared; was it prepared by you?

A. Yes, it was prepared by me, consultation by our staff and our bowling division.

Q. You indicate the number of lanes for the number of different centers in the market. How did you have that information?

A. Well, I have been in and out of these places on various occasions during the last 12 years.

Q. You made note of the number of lanes on there?

A. Yes, fairly common knowledge in the area how many lanes each of these properties has.

Q. The relation to the distance from Bowl-O-Mat, how do you know that?

A. I have driven it myself.

Q. Have you made note of the distance while you were driving?

[413]

A. Yes.

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[415]

The Court: Before we go any further, if I understand P-14, perhaps this would be of some assistance to the jury also, that only applies to the year 1973 with regard to these various bowling centers?

The Witness: No, sir. Since 1963 or '4 every one of these centers have been in operation. Brunswick's takeover of the first four has varied, as I said earlier——

The Court: Ten Pins, Lodi, Fair Lawn and Interstate?

The Witness: Yes, they took over Fair Lawn and Interstate in 1965, they took over Ten Pins in, I believe, 1969, and, sir, I think they took over Lodi in either 1969 or 1970.

The Court: Interstate, do you know?

The Witness: 1965.

The Court: What about the rest of them?

The Witness: Those have all been opened since 1963.

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The Court: Are they owned by Brunswick?

The Witness: No.

The Court: They are individually owned by the names thereon?

The Witness: Yes.

The Court: The first four alleys are owned or controlled by——

The Witness: They are operated now by Brunswick.

• • •

Q. In answer to a question put to you by Mr. Seeley you said this was prepared and reflected what you saw in 1973; is that right?

A. Yes.

Q. Do you know of any significant change which would affect the vitality of this exhibit or the accuracy of this exhibit, say, five years before?

A. All of the centers weren't then in operation, because as I just said to his Honor, Brunswick wasn't operating Ten Pins or Lodi five years ago.

Q. But the businesses were the same?

A. Yes.

Q. And the number of lanes, to your knowledge,

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has there been any significant change in that?

A. Only one small change. Frank Esposito had more than 38 lanes a few years ago, but he cut out about four lanes, and he converted that to office space in his bowling

center, so the 38 lanes for Esposito was some years ago, it was a little higher.

Q. Now, Mr. Lieblich, I address your attention to the division, I think that's called long division, on the bottom of the page?

A. Yes.

Q. What have you done there?

A. Well, there are 148 lanes in the Paramus area which Brunswick now operates.

Q. That's shown on the side; is that right?

A. Yes. Total 148. That's the total of the number of lanes that Brunswick is now operating in its BCO division in the Paramus area.

Q. And then, sir, you took 384.

A. Now, the—below that I have listed the number of lanes in all of the other centers, including our 36, in this primary area, that's 236 lanes that the independent proprietors now operate, totalling 148 of Brunswick and 236 of the independent proprietors, that's 384 lanes.

I have then divided the 384 lanes into the 148 lanes that Brunswick operates, which gives Brunswick 37 per cent

[418]

of the total Paramus market.

Q. Now, do you know whether or not Brunswick had articulated any principle having to do with the percentage of centers or lanes which it should operate in a populous area?

A. Yes.

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[420]

Mr. Hoffmann: The pending question is does he have any knowledge.

The Court: I will permit him to answer that yes or no.

(Counsel returned from side bar, and the following proceedings were had within the hearing and presence of the jury:)

(Record read.)

By Mr. Hoffmann:

Q. Mr. Lieblich, can you tell us from what representative of Brunswick such an articulation came?

A. Yes.

Q. Who was that?

A. The president of their bowling division, Mr. Milton

[421]

Rudo.

Q. Can you tell us what it was that Mr. Rudo said?

A. Yes. He said that in the opinion of their lawyers, if Brunswick operated more than—or approximately 25 per cent of the lanes in any area, it might constitute a—or would constitute a monopoly.

Q. Anything else you recall about his statement?

A. Yes. This was in connection with a discussion about the number of centers that Brunswick was then operating a few years ago in the San Fernando Valley in California, and Mr. Rudo said that they backed off on taking over one additional center in that valley because their attorneys thought they would then be having too many centers, which might constitute a monopoly.

Q. Now, sir, the final tag line was again on your demonstration of the Paramus market what figure?

A. Brunswick now has 47 per cent of the lanes in the Paramus market area.

Mr. Hoffmann: Would you be good enough, Miss Costello, to mark as Plaintiff's 15 for identification the Paramus Bowl-O-Mat statement of income—sorry—of revenues and net income and other data for the years 1965 through 1972?

(Exhibit P-15 marked for identification.)

[422]

The Court: What center is that?

Mr. Hoffmann: Paramus.

Q. Do you have one?

A. No, sir.

Q. Mr. Lieblich, I show you Plaintiff's 15 for identification and I ask you to tell us what it is.

A. Yes. It is headed "Paramus Bowl-O-Mat."

This is the history of the revenues of our Paramus operation for 1965 through 1972. It shows for each year the bowling revenues, shoe rental revenues, the snack bar revenues, the bar revenues, and the machine and miscellaneous revenues.

It has after it the same category that we had in the prior documents on Holiday and Pueblo. It reflects net income per cent after cost of goods and labor, and it has a paragraph for each additional $1,000 of bowling revenues, net income increases for here a total in Paramus of $1,140.

Q. And was this prepared in a way similar to your testimony concerning other exhibits which related to Holiday and to Pueblo, and which showed the net income and the amount of increase for each additional $1,000 of bowling revenue?

A. Yes, in the very same way.

Mr. Hoffmann: Your Honor, I now would like

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to offer Plaintiff's 15 into evidence.

The Court: Any objection?

Mr. Seeley: No.

The Court: Into evidence.

(Exhibit P15 received and marked in evidence.)

Mr. Hoffmann: With your consent I'd like to spread these before the jury. I am a little short of copies at the end, but there are three here.

Perhaps the jury would care to look at them.

I think if they would be good enough to look over each other's shoulders, I won't dwell long on this exhibit.

Can you all take a look?

(The jurors answer in the affirmative.)

Q. Mr. Lieblich, do you have a copy of this?

A. No, I don't.

Q. Well, then, maybe we will work together.

The Court: No. 6 can use his, they can share it.

Mr. Hoffmann: Thank you, I appreciate that.

Q. Now, Mr. Lieblich, you have after indicating in the margin "Bowling, shoe rental, snack bar, bar, machine and miscellaneous," totalled them, have you not?

A. Yes.

Q. What does that totalling constitute for each

[424]

year?

A. Total of the revenues in that bowling center for each of the years.

Q. And so if you look on the bottom line, starting in 1965, there is $264,535, that's the total revenue for 1965 for the Paramus Bowl-O-Mat center; is that right?

A. Yes.

Q. Then they vary somewhat from year to year, do they not?

A. Yes.

Q. But in each instance that's the total of revenue for the year in that line which is on the same level as the $264,535 for 1965.

Then the next column, sir, that's percentage, there is a percentage mark on top?

A. Yes.

Q. Would you tell us what that percentage mark reflects?

A. Yes.

As in the other exhibits, for 1965, our shoe rentals were $5,298, that constitutes 3 per cent of the total of the bowling revenues for that year of $160,692.

Q. And then that computation has been made in similar fashion, has it not, for the other years from

[425]

1965 on through 1972?

A. Yes, sir.

Q. And in the final column at the right is a grand totalling, is there not?

A. Yes.

Q. And in relation to the percentage figure on the last line, what does that reflect?

A. That's an average for the eight years.

Q. The average for each one of these columns, 1965 through 1972?

A. Yes, each category of revenue. That's the average on an eight-year basis.

Q. So that even though there may be differences from year to year, the shoe rentals over that period of time averaged 4 per cent; is that the meaning of the column?

A. Yes.

Q. 4 per cent of the total revenues of the center?

A. Bowling revenues.

Q. And the snack bar, 32 per cent?

A. Yes.

Q. Of the total revenue?

A. Yes.

Q. And the other items, bar, 34 per cent?

A. Yes.

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Q. Machine and miscellaneous, 3 per cent?

A. Yes.

Q. Now, going down to the second part of the demonstration, the net income percentage after cost of goods and labor, would you explain to us what is meant by that?

A. Yes. As I explained earlier, in our bar we have a certain cost of our goods and our labor. The average for the year was 63 per cent. That's what it cost us on an average each year for the liquor we served and the labor, the bartenders and the waitresses, et cetera, which gave us a net profit in the operation of the bar on an average of 37 per cent.

The same arithmetic goes into the snack bar, there our net profit was 15 per cent, which means that over the years our cost of goods and our cost of the ladies or men who work on the ranges in the kitchens and our waitresses was 85 per cent.

Q. Now, in the bottom grouping, "For each additional $1,000 of bowling revenues, net income increases——"

A. Yes.

Q. Would you explain that once more for us?

A. Yes. As I said earlier, we are talking first about $1,000 of bowling income.

As I explained all of that isn't profit, but almost

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every dollar of it is, as I said earlier, our utilities might go up a little bit, or we might have a little more labor cost, but basically there is a very small additional cost.

So for each $1,000, we have taken 90 per cent.

And our shoe rentals, as I explained, if we have larger usage of our shoes we will have to replace them a little bit more, if shoe laces are broken we have to put in new shoe laces. Again, it isn't a full 100 per cent, it is 90 per cent of the income, that's $36.

In our snack bars, our profit is 15 per cent, so taking 15 per cent of the additional $320 that we would receive, that would be $38.

In our bar or cocktail lounge, where our net profit is 37 per cent of all the dollars we take in, we contemplate 340 additional dollars, that would be $126.

Machine and miscellaneous, 3 per cent of 1,000 is $30, and there I already explained since that comes from cigarette revenues, candy machines and pinball machines, and that type of income, we get 100 per cent of that, so that would equal $30.

Adding them all together we'd have $1,140 of net income for each $1,000 of additional revenue.

Mr. Hoffmann: Now, your Honor, again I'd just like to make for the record a statement, I hope that

[428]

I have your approval: that I would want to leave the subject matter of Paramus with the understanding that it is not through oversight, but I will return to it again

probably the first thing on Monday morning, and I'd like now to open the subject of the center in San Juan, Puerto Rico.

Q. Mr. Lieblich, the centers you have described thus far, Pueblo, Holiday, Paramus, these were all separate corporations, were they not?

A. Yes.

Q. And indeed, they are also separate plaintiffs in this lawsuit; is that not correct?

A. That's right.

• • •

[443]

Q. At that point in time, what bowling centers remained in the San Juan area?

A. All the—the two Brunswick-equipped houses, our Paradise Bowl-O-Mat and Star Bowl.

Q. You called them Brunswick-equipped houses. Do you know whether they were automatic pinsetters that Brunswick makes in both houses?

A. Oh, yes, they were identical.

Q. That is, both in Paradise and in Star.

A. Yes, sir; they opened within a month of each other in 1960.

Q. And the equipment was identical in kind; is that your testimony?

A. Identical.

Q. Now, do you happen to know whether or not

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the equipment was sold on standard conditional bill of sale contract?

A. Yes, I had examined the purchase orders that Mr. Cobian and Mr. Carady had when I was talking with them

about purchasing Star in 1961. So I did examine their purchase contract. And, of course, I knew what our contracts were.

Q. Now, in your own purchasing, did you do that by making a down payment to Brunswick and the rest on deferred payments?

A. Well, sir, we purchased the physical assets of our center from a Mr. Harry Woods and a Mr. Gary Wolf. And when we purchased it, we bought it subject to the conditional sale contract that their company had signed with Brunswick eight months earlier.

Q. Well, did the account show, on other purchases, that there had been originally a down payment made?

A. Yes, sir.

Q. And further payments were required under the conditional bill of sale; is that your testimony?

A. That is correct.

Q. Now, in relation to Star, do you have any knowledge as to whether or not Star made an initial down payment and had installment payments to

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come?

A. Yes.

Q. How did you come by that knowledge?

A. I saw their contract. Mr. Carady showed them to me in 1961 when I was negotiating with him to purchase his bowling center.

Q. Do you know anything at all about whether or not Star regularly paid its bill to Brunswick?

A. Yes, I do.

Q. What is it that you know?

A. I know they did not.

Q. And how do you know that?

A. From talking with Mr. Carady and Mr. Cobian and looking at the Brunswick payment records.

Q. What did those records disclose?

A. That we paid many hundreds of thousands of dollars of moneys to Brunswick more than Star paid.

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Q. On Friday, Mr. Lieblich, you identified and later there was received into evidence Plaintiffs' Exhibit 14.

I show it to you again. This describes the Paramus market.

Now, Mr. Lieblich, at the bottom line there is some long division. This was not done through a computer, was it?

A. No, I did it myself.

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Q. Now, would you do it again for us, please?

It seems to me as if it ought to be redone.

A. Yes, I did it over the weekend. I realized there was nothing wrong with my arithmetic, but with the typing in our office.

I had 39 percent down, and when the girls typed that they mistook the 9 for 7.

Actually, the division gives Brunswick 39 percent of the market, not 37.

Q. It is a larger sum rather than smaller percentage of the market?

A. Yes. If I could correct that in 10, I would correct it.

Mr. Hoffmann: I will ask for the Court's leave.

May this be corrected?

The Court: Yes.

The Witness: Thank you.

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Q. Mr. Lieblich, did you receive any guidance—when I say you, I mean the Bowl-O-Mat Company—did you receive any guidance from Brunswick concerning the availability of bowlers in the Fort Lauderdale area, prior to your acquiring Fort Lauderdale Bowling Center?

A. Not specifically with Fort Lauderdale. I learned certain guidelines from Brunswick, about one lane to 1400 population.

Mr. Hoffmann: I would like to have marked Plaintiff's Exhibit 25 for identification, another Brunswick survey, bearing on the cover the legend, "Brunswick Bowling Operations Department, Lauderdale Lanes, Inc., Fort Lauderdale, Florida, evaluation 48."

(Exhibit P-25 marked for identification.)

Q. Mr. Lieblich, you have in your hand Plaintiff's Exhibit 25 for identification.

A. Yes, Mr. Hoffmann.

Q. Can you tell us what it is.

A. Yes. It is a Brunswick Corporation evaluation report of Lauderdale Lanes in connection with their taking it over and operating it for themselves.

Q. Have you ever seen it before?

A. Yes, sir.

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Q. Can you tell us under what circumstances.

A. Yes. You gave it to me, Mr. Hoffmann, after you had subpoenaed the Brunswick records and they produced this for you.

Mr. Hoffmann: I offer Plaintiff's 25 in evidence.

The Court: Over the objection of the defendant, into evidence.

(Exhibit P-25 received in evidence.)

Q. Mr. Lieblich, I address your attention to page 5 of Plaintiff's Exhibit 25 in evidence. Do you notice the heading, "B market"?

A. Yes.

Q. Would you be good enough to read it aloud, please?

The Court: From where?

Mr. Hoffmann: From the beginning, "This market has a total population"—it is just two or three sentences, Your Honor.

A. "This market has a total population just under 250,000 people, of which 37,000 are non-white. This leaves us an effective population of 213,000, which should increase to 235,000 by 1970. This gives us a lanes to persons ratio at this time of 975 to 1. This is a reasonable ratio for a recreation minded

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such as this one."

Q. Were you informed by Brunswick at any time prior to the receipt of Plaintiff's 25 that Brunswick regarded 975 to one as a reasonable ratio for persons to lane in the Fort Lauderdale area?

A. Originally Brunswick had given us a figure of 1400 population to one lane. That was back in 1959, 1960,

when I was organizing new bowling centers. Each year thereafter they began to drop the ratio which they thought justified their sale of additional lanes and pinsetters.

Q. Would you look, please, at page 6, to the heading, "D, Competition"?

A. Yes.

Q. I address your attention to the following, "There are six competitive houses with a total of 178 lanes in this market area. Though the lane to persons ratio of 975 to one appears low, an effective program of bowling promotion and good school bowling programs have allowed this area to generate good bowling lineage."

Bearing in mind that this exhibit bears a date of February 8, 1965, Mr. Lieblich, does the statement there comport with your knowledge of conditions in the Fort Lauderdale area?

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A. Well, sir, yes and no. The first part—they say the lane to person ratio of 971 to 1 appears low. Yes, I agree. But then they say, "An effective program of bowling promotion and good school bowling programs have allowed this area to generate good bowling lineage." That's absolutely untrue.

Q. Why do you say it is untrue?

A. Well, I know from our experience, and the experience of the other proprietors down there, everyone was losing their shirts.

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Q. Now, Mr. Lieblich, did you at any time thereafter operate a center in the Fort Lauderdale area?

A. No.

Q. Mr. Lieblich, do you know what happened to the Fort Lauderdale Bowl-O-Mat center after you left?

A. Yes.

Q. What was that?

A. Brunswick took it over, and it is now operating as part of their BCOD division.

Q. About when did that happen?

A. I think it was either March or April of 1965.

Q. How many lanes, again, was that center?

A. 40.

Q. And your testimony was that Brunswick had also Imperial in the same area; is that right?

A. Yes, about the same time Brunswick took over Imperial, I visited both places on several occasions since then to see if they are still operating it, and they are.

Q. How many lanes is Imperial?

A. 54.

Q. Do you know whether Brunswick has any other centers in the general Fort Lauderdale area?

A. Not that I know of.

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Q. Do you know what the total number of lanes available for bowling in the area is?

A. Well, in the market area, Manor has 20—I will add them—Manor has 20, Flamingo has 24, our old Fort Lauderdale Bowl-O-Mat has 40, Imperial has 54, and West Hollywood has 32.

That's a total of 170 lanes in the area that are in my judgment in the primary market.

Q. How many Brunswick lanes again?

A. Brunswick has 94. That's over 54 per cent of the area.

Q. Of 174?

A. Of 170.

The Court: Better than what?

The Witness: 50 per cent.

Q. A good deal more than the 25 per cent that counsel advised against; is that not so?

A. Double that, sir.

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Q. Mr. Lieblich, when did you first learn that Brunswick was going into the business of operating bowling centers?

A. In January of 1965 it first came to my attention that Brunswick was setting up procedures to go into the operating business.

Q. Under what circumstances did you get that information?

A. It was just general knowledge in the industry that Brunswick was setting up a training program for a lot of managers. I think one or two of our managers had been approached. In one way or another it got to our attention that Brunswick was taking certain steps to go into the operating business.

Q. Did Brunswick make any formal statement or announcement about this?

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A. Yes. After they took over a good number of centers in the Spring of 1965 there was a formal statement made by the president of Brunswick Corporation, at a meeting of the Bowling Proprietors of America, at their annual convention.

Q. Where did that meeting take place?

A. In San Juan, Puerto Rico, at the Sheraton Hotel.

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Q. And about when did the meeting take place?

A. In June of 1965. I guess it was about the third week in June, 1965.

Q. Did Mr. Hanigan make his statement in person; did he address the meeting in some way?

A. Yes, each year at the annual meeting of the Bowling Proprietors, time was always made available by the organization to Brunswick as well as to AMF so they could speak to the proprietors about things that were happening which would be of interest to the proprietors.

Often they would talk about new products they were bringing out or new promotional programs, whatever Brunswick or AMF thought would be of interest to the proprietors was to be discussed or recorded by them during the time allotted to them during the annual convention.

Q. And these bowling proprietors, about how many, if you can recall, were present at this meeting in San Juan in June 1965?

A. Several hundred. It was a very large turnout at the convention.

(Exhibit P-27 marked for identification.)

Mr. Hoffmann: I have asked Miss Costello to mark P-27 for identification, a document entitled "Open Convention Session, Hanigan discussions Brunswick," and below in the bottom, identification,

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Bowling Proprietors.

Q. Mr. Lieblich, I show you Plaintiff's Exhibit for identification number 27, and I ask you if you have ever seen this before?

A. Yes, I have.

Q. Would you tell us under what circumstances it first came to your attention?

A. Yes. This is a copy of the article that appeared in the magazine published by the Bowling Proprietors Association of America. It is called the Bowling Proprietors Magazine.

And this article appeared in their July-August 1965 issue.

Q. Can you tell us whether this article fairly and accurately reports what Mr. Hanigan had to say at the meeting in San Juan in July of 1965?

A. Yes, it is a reprint of Mr. Hanigan's address to the convention in June of 1965.

Mr. Hoffmann: I offer in evidence Plaintiff's Exhibit 27.

The Court: Any objection?

Mr. Seeley: No.

The Court: Into evidence.

(Exhibit P-27 received and marked in evidence.)

Q. Now, Mr. Lieblich, have you had occasion to

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just look this over now?

Well, let me guide you, if I may.

Would you look at page 2, please?

A. Yes.

Q. Do you notice a box which says "Resolution expresses BPAA concern——"

Mr. Seeley: Your Honor, I did not realize the entire contents of the exhibit. I have no objection

to any of it except this insert in the box that he speaks of.

As to that, I would like to make an objection on the ground that it is irrelevant and prejudicial.

The Court: Let me read it first.

(Counsel approached side bar, and the following proceedings were had without the hearing of the jury:)

The Court: Why should I permit it?

Mr. Hoffmann: This Bowling Proprietors article prints verbatim what Mr. Hanigan had to say. This resolution is a resolution adopted by the entire group unanimously at the same meeting and expresses the response of the Bowling Proprietors to Mr. Hanigan.

Now, one of the critical issues in this case is whether or not Brunswick may acquire bowling

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centers for the purpose of repossessing and rehabilitating them. This is what Mr. Hanigan says he is going to do in the statement which is part of the exhibit.

The bowling proprietors express their concern that this is not true at all. To the contrary, they believe that this is injurious, and that Brunswick ought not to acquire it, and indeed, we are going to show that Brunswick never in good faith went through with repossession and selling. The plan Hanigan announces is, "We will take the machines back or the centers and we will rehabilitate them, and sell them off."

We propose to show that only two out of 260 were sold off.

I'd like to point out also that this position of mine will be supported by witnesses, Mr. Lieblich, Mr. Dankoff, who proposed the resolution, will take the stand, the president of the Bowling Proprietors Association will take the stand, and there isn't any question that this is an accurate reproduction of the resolution which was passed, and Judge Wortendyke when confronted by the same problem let it in on the basis of the need to show intent with respect to Brunswick's acquisitions.

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The Court: Let the record reveal that the pertinent part of this resolution that has been referred to by counsel for plaintiffs reads as follows:

"Resolved, that we, the members of the Bowling Proprietors Association of America, hereby express our grave concern that the incursion of the Brunswick Corporation into the area of operation of bowling centers in direct competition with members or non-members of this Association is not in the public interest and is injurious to competition based upon its pre-eminent position as a manufacturer and supplier, major creditor and financier in the bowling field."

My offhand analysis of this is, Number 1, this isn't a class action.

Number 2, what is the relevancy of the concern of the members or non-members of this association as far as this case is concerned?

Mr. Hoffmann: Your Honor, the relevancy is that Mr. Hanigan on several occasions, this time and later as well, thought it necessary to reassure the bowling proprietors that what he was doing when

he was acquiring the centers was to simply acquire them for rehabilitative purposes.

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Now, if that's so, then the issue would be much more different in respect to monopoly. We are going to show that the bowling proprietors from the first spotted this as false, and he had to reassure them because they had spotted it as false, and that the course of conduct of Brunswick later on indicated it was false, and indeed, they acquired centers for the purpose of operating them.

The Court: I will sustain the motion at this time without prejudice later on, I might let it in, but not as far as this witness is concerned and the testimony of Mr. Lieblich.

If someone else is going to appear and testify as to this, the resolution, I may permit it at that time.

It will be removed. You are not going to pass it on to the jury now anyway.

Mr. Hoffmann: No.

The Court: I will sustain your objection at this time, Mr. Seeley.

(Counsel returned from side bar, and the following proceedings were had within the hearing and presence of the jury:)

By Mr. Hoffmann:

Q. Mr. Lieblich, can you without reading from

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Plaintiff's 27, tell us what you understood Mr. Hanigan to be saying to you and the other proprietors at the meeting in San Juan?

Mr. Seeley: I object to that. The document is here——

The Court: I will permit him to testify as to his recollection, I won't permit him to summarize it.

What is your recollection?

The Witness: I remember there were 14 points, because they were famously known thereafter as Mr. Hanigan's Fourteen Points.

The upshot of it was that Brunswick was taking over the centers as salvage operation, that the proprietors should have nothing to be concerned about with Brunswick expanding their operating activities, as salvage. Brunswick would try to get them on their feet, and sell them off, and that the proprietors shouldn't be alarmed at what was happening.

And then he cited the guidelines that his attorneys had given as to how the centers should be operated under Brunswick's ownership.

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Q. Mr. Lieblich, would you be good enough to address your attention to the third page of the exhibit?

A. Yes.

Q. Is this your point of reference, where Mr. Hanigan is reading the "Legal Guidelines" for the bowling establishments to be operated by the Brunswick Corporation?

A. Yes, these are the 14 points.

Q. I want to address your attention to certain of these points. Would you look, please, at point four?

A. Yes.

Q. "Brunswick Corporation should not consider opening any bowling establishments in new locations for the purpose of placing in them repossessed pinsetters and alleys unless it has been determined by a proper survey in

each case that the location could support such establishment without imperiling the business of any existing establishment in the area, and that no other person or entity is available which is ready, able and willing to open an establishment in such location."

Can you tell, of your own knowledge, whether or not this fourth point was followed by the Brunswick Company in practice?

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A. I know they opened up quite a few brand new centers since this meeting at San Juan.

Q. And in the fourth point it was, "It shouldn't consider opening any bowling establishment for the purpose of placing in them repossessed pinsetters and alleys, unless determined" and so forth, "and that no other person or entity is available which is ready, willing and able to open an establishment."

In respect of that matter of no other person or entity being available, do you have any knowledge of situations in which such persons were available for the establishment——

A. Yes.

Q. What is the first one that comes to your mind?

A. In Fort Wayne, Indiana, where Brunswick opened up two or three years ago a brand new bowling center, there was an existing prorietor in that area that was desirous of acquiring the Brunswick center.

Q. And any other examples that come to mind?

The Court: What about the first part of item 4? Do you—you have it in front of you there?

The Witness: Yes.

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The Court: Point 4, will you enlighten the jury on that? You discussed the second part, about the availability of new entrepreneurs. What about the first part?

The Witness: I know they have opened several—I would say about eight or ten, that I can think of.

The Court: For the purpose of placing in them, repossessed pinsetters and alleys?

The Witness: Yes, sir; some. Some had new equipment, but others were repossessed equipment, as I understand. But I am not sure if they were repossessed, or were rebuilt, or brand new.

Q. Now, Mr. Lieblich, would you be good enough to look at the fifth item. "Brunswick Corporation should not acquire any existing bowling establishment otherwise than through the necessity of repossessing pinsetters or alleys, unless it should appear that such establishment had become a failing business and that the operator had requested Brunswick to take it over."

Can you tell us, from your own knowledge, whether or not this legal guide has been followed by Brunswick?

A. I don't believe so.

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Mr. Seeley: I object to his belief.

The Court: That will be stricken and the jury will be instructed to ignore it.

Do you know or don't you know?

The Witness: No.

The Court: You do not know.

The Witness: No, sir; I mean the answer is—I am answering the question as "no."

Mr. Hoffmann: May we go back, with your permission?

The question was: Could he tell us, of his own knowledge, whether or not the guide had been followed?

The Court: "I don't believe so." I don't think that answer is responsive.

The Witness: Then I would say yes.

Q. You do know; is that your answer?
A. Yes.
Q. Will you tell us about that?
A. Well, they certainly didn't ask our permission to take over our Fort Lauderdale Bowl-O-Mat. They took over Dutchess Lanes from Mrs. Ethel Levine, against her specific wishes. I recall seeing in the Brunswick files that you gave me correspondence from Mrs. Levine to the chairman of the board of

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Brunswick, asking their continued cooperation and understanding, in view of her husband's long association with the Brunswick Corporation.

Q. Can you think of any others at the moment?

A. Yes. When they acquired Fair Lawn Lanes and Interstate Lanes at a bankruptcy sale. Those were very successful business operations. They were making a good deal of money at that time. Their parent company was in bankruptcy, but both Fair Lawn and Interstate Lanes were profitable centers. They were not losing centers at the time of the acquisition by Brunswick.

Q. You mentioned the bankruptcy sale. What was the organization involved in that sale?

A. American International Bowling Corporation.

Q. Do you know what that corporation did prior to the bankruptcy?

A. Yes, it was the largest operator of bowling centers in the country at that time.

Q. What time are you referring to?

A. Through 1965. In the early part of 1965 a petition in bankruptcy was filed right here in Newark for that company, since it was a New Jersey corporation which had its principal office in Englewood, I believe--yes, it was in Englewood.

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Q. And do you know about how many centers they operated?

A. There were about 34 that were then being operated by American International Bowling Corporation.

Q. Do you know what the purpose of the sale was?

A. Yes.

Q. What was that, sir?

A. The Referee in Bankruptcy in Newark--or, rather, the Receiver--had advertised in newspapers, and wherever else legal notices should be published, that there would be a sale here in the Courthouse in Newark of all of the assets of the different companies owned by American International Bowling Corporation. The purpose——

Q. Then did you have--or operate any centers near the centers owned and operated by AIBC, or the American International Bowling Corporation?

A. Yes.

Q. What was that, sir?

A. Well, our center in Paramus, New Jersey, was fairly close to two of the centers that were then being

operated by American International Bowling Corporation. They had a center in Fair Lawn, New Jersey, and they had one in Ramsey, New Jersey, referred to as

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Interstate Lanes.

Q. And did you have any interest in acquiring the centers that were near yours?

A. Yes.

Q. How did you express it?

A. When we received the notice of the sale, I received from the Bankruptcy Court, or the attorney for the Receiver, the profit and loss statements of several of the centers, specifically, Fair Lawn and Interstate in Ramsey, and there was an additional one in Pennsylvania in which we had expressed an interest. And I had various discussions with our board of directors, and several of the chains, about coming to the Bankruptcy Court in Newark to bid for some of the centers that were to be offered for sale.

There were two other individuals who had expressed an interest in buying some of the other centers, and the three of us had intended to come to court and make an offer, some of us, to buy the centers.

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Q. Did you do that?

A. No, sir; at the last moment our Board of Directors met with me and we concluded that we should not come to court to make a bid for other Fair Lawn or Interstate Lanes in Ramsey, or the property in Pennsylvania.

Q. Did you learn what happened to the AIBC centers?

A. Yes.

Q. What was that?

A. At the time of the sale here at the courthouse in Newark there was very active bidding for many of the centers that were offered for sale. Brunswick, who was the high bidder on 31 of the 32—if my memory is right in there being 32—there was one, a center out on the Island, that a Chris Vitolo outbid the Brunswick offer. And he left that day being the owner of that center.

Brunswick purchased against the competitive bidding among individuals all the other centers that day.

Q. I ask you, sir, to look at Plaintiff's Exhibit 27 in evidence again. Do you notice Mr. Hanigan's statement on the very last page, the next to the last line, in the first column, starts—

A. Excuse me, sir. Next to the last—

Q. The next to the last line on the first

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column starts, " I know that some people are very suspicious of our motives in setting up retail establishments. People are afraid that we are trying to dominate the bowling business. To give you some idea of how ungrounded these fears are, we figured out that the investment you have in bowling establishments, exclusive of buildings and land, is $4,400,000,000."

Did that statement of Mr. Hanigan reassure you in any way that Brunswick was not setting up retail establishments in order to dominate the bowling business?

Mr. Seeley: I object.

The Court: Why? He, himself. Why is that objectionable? I am going to permit that.

Answer the question.

A. Yes.

The Court: The answer is yes.

Q. You were reassured by the statement?

A. Yes.

Q. Was this statement made prior to the AIBC sale, do you know?

A. No, it was made a month or two after the sale.

Q. And you had knowledge of the AIBC sale at the time?

A. Yes.

Q. Nonetheless, you were reassured by the remarks

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of Mr. Hanigan?

A. Oh, I didn't understand your question. I thought Mr. Hanigan was trying to reassure us. But my own conclusion was quite to the contrary. I didn't believe him.

Q. And what was the reason for not believing him, if you can remember?

A. Yes. Some of the activities that I had already experienced with the Brunswick Corporation at that point—I just didn't believe what they were saying.

Mr. Seeley: I object to that, your Honor, because it's general. There is no way to know what facts he is talking about.

The Court: Will you read that answer again, please.

(Record read.)

The Court: No, I will let it remain.

Q. In view of Mr. Seeley's comment, Mr. Lieblich, would you care to relate some of those activities which caused you to disbelieve Mr. Hanigan?

A. Yes. I think primarily, in our dealing with the very highest executives of Brunswick—it was in the sum-

mer of 1964 when we had given a parent guarantee on all of the obligations of our subsidiaries on Mr. Hanigan's assurance that all people would be dealt with very

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strictly, and on the same basis. I learned in the next few months that this was not so.

I recall—well, I wrote to Brunswick in February of 1965, as an example, which was some months before Mr. Hanigan's statement in San Juan, when I learned that the people in Puerto Rico that owned Star Bowl weren't paying—and I wrote to Brunswick and said I had been assured that their policy was to enforce all contracts fairly.

And I got a reply which didn't, to me, measure up with the facts.

And then about two weeks after that exchange of correspondence I was reading the annual report of a public company in the bowling business called Great Lakes Bowling. This company is on the American Stock Exchange, as is our company. Its president is Mr. John Brown. And while I read the report of Mr. Brown's company for the year that just ended, my eye caught a footnote in his annual report which reflected the arrangement that he had worked out with his company on the Brunswick debt. And he was paying only 6 per cent interest and we had been asked to pay 9 per cent interest.

So I wrote to Mr. Cahill, a director of the company, and in my letter I extracted the footnote in the Great Lakes report, and I asked him, "How come?" This

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didn't measure-up to what they had promised us in June of 1964 would be the case.

After some interoffice correspondence in the Brunswick organization, which you showed me, Mr. Hoffmann,

after you subpoenaed their records, I had a reply from Mr. Cahill which said that the arrangements that had been effected with Mr. Brown, although consummated later than ours, were actually completed prior to my discussions with Brunswick. And that wasn't true.

So it is things like this, and from the other activities that occurred in earlier years, that led me to believe that no matter what Mr. Hanigan said in Puerto Rico, I just didn't believe him.

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Q. Well, as a matter of fact, did you have occasion to learn how many bowling centers were acquired by Brunswick subsequent to the June 1965 Puerto Rico meeting of the BPAA?

A. Yes.

Q. How many was that?

A. Well, in all, there were approximately 260 bowling centers that Brunswick repossessed and operated itself.

Now, at San Juan, I think Mr. Hanigan said there were about 76.

The Court: How many were there?

The Witness: 259, 260.

I think at San Juan there were about 70 that they then operated, so between San Juan and right now they took over an additional 180 centers.

Q. Mr. Hanigan said at San Juan that he'd rehabilitate the centers and then try to sell them off; is that right?

A. Yes.

Q. Do you know how many such centers were sold by Brunswick?

A. Very, very few.

Q. Do you have any information as to the amount?

A. Yes.

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Q. What is that, sir?

A. At the last time that I heard Mr. Rudo testify or under examination, I think he said, this was about 1970, that two had been sold between 1965 and 1970.

From 1970 to date, I don't know if any of the BPOD centers that have been sold. There may be one or two, but I don't know of any that were sold.

Q. Finally, going back again to plaintiff's 27, would you look on the second page, please, near the bottom of the first column:

> "We have decided in these cases that the right answer is repossession. And the reason for this is that we think it is unfair to other bowling proprietors who are paying us or our competitors to give some people a free ride."

Sir, do you know of any instances in which Brunswick gave free rides to your competitors?

A. Oh, yes.

Q. Just briefly, who were they?

A. In Puerto Rico—pardon me—in Pueblo, Colorado, our competitor, Belmont Lanes, had a free ride for three years. They paid a total of $2,300 in three years.

Our competitor in Puerto Rico, Star Bowl, re-

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ceived numerous concessions, and certainly wasn't called upon to make that.

In Fort Lauderdale, while it was still our operation, our competitor, Imperial Bowl, paid very, very, very little, if anything, to Brunswick during their operating years.

Q. Mr. Lieblich, did you have occasion to attend the meeting of the Bowling Proprietors Association of America in San Diego, California?

A. Yes.

Q. Do you remember when that meeting took place?

A. Yes, sir, that was a year after the San Juan meeting, that was in June 1966.

(Exhibit P-28 marked for identification.)

Q. I show you a pamphlet that's been marked P-28 for identification, bearing on the cover page the legend, "Let's Talk Facts."

Can you tell us what that is?

A. Yes. At the Proprietors' Convention—at the Proprietors' Convention, just before the Brunswick people made its presentation during the period of time allotted to it, there was distributed to all of the members this pamphlet from the Brunswick Corporation, which was entitled, "Let's Talk Facts."

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Mr. Hoffmann: I offer 28 in evidence.

Mr. Seeley: I have no objection.

The Court: Into evidence.

(Exhibit P-28 received and marked in evidence.)

Mr. Hoffmann: Your Honor, may I pass these three copies? It is a rather bulky thing. We didn't make enough copies.

The Court: Yes.

Mr. Hoffmann: Would you be kind enough to pass these about?

Q. Would you be good enough to address yourself to the first page, that is to say, the first page after the statement about the—there is an old fable about four blind men who were examining, and of course, it is an elephant that

they were examining, is it not? There is some confusion among the blind men if I may make the statement for the record, as to what the elephant was.

There is no confusion as to what this is, is there, Mr. Lieblich; is this a statement of Brunswick's policy?

A. It was given to us by Brunswick.

Q. And if you look at page number five, do you see the sentence, "Brunswick's policies that are

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the subject of this report, were developed after two years of careful top management consideration"?

The Court: What page are you on?

Mr. Hoffmann: On page 5.

The Court: Oh, yes.

Q. Second paragraph, Mr. Lieblich. You see that?

A. Yes.

Q. Was this circulated to you from Brunswick people at this meeting?

A. It was handed to each of the proprietors who were in attendance at the meeting. I was in attendance, and I received my copy.

Q. When you go on in it, you notice the heading on the next page—by the way, it says it will take just 15 minutes to read the entire report, but your Honor, I trust I won't read it all and we will go through it quickly.

The Court: I trust, also.

Q. You notice on the next page, 6, the heading in bold caps, "Brunswick is Protecting your Investment in the Bowling Industry".

What did you understand that to mean; what understanding did that heading give to you, if any?

A. Brunswick was going to take care of proprietors,

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and would protect the investment that each of us made in our companies.

Q. Now, these various headings, did that seem to be keyed in your mind to that broad statement that Brunswick is protecting your investment? The headings I refer to on that page are, one, a firm price policy; two, a firm down payment policy.

Do you see that?

A. Yes.

Q. Were these in your mind examples of Brunswick's protecting your investment?

A. Yes.

Q. Now, then, turn the page, please, to page 7, where you have a reference to 30 percent or more.

Do you see that heading under "Down Payment Plan"?

A. Yes.

Q. "A down payment in excess of 30 percent would create a healthier competitive climate for the bowling industry for it affords the proprietor maximum opportunity for success."

Was this requirement for a down payment of 30 percent, Mr. Lieblich, something new as of the year of that meeting, 1966?

A. Yes, I believe so.

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Q. Do you know what it had been in the past?

A. Well, considerably less, on the pinsetters, the proprietors paid $500 down against an $8100 purchase. That's about 26 percent.

May I make some marks on this?

Q. Sure, if you want to.

The Court: What happened to your computer?

Mr. Hoffmann: Off the record.

(Discussion off the record.)

A. Yes, that was less than 10 percent down, and on the lanes, the investment varied, we generally paid 20 percent down, but other proprietors, other contracts that I have looked at, had as little as 10 percent down on the lanes.

So this requirement of 30 percent or more was a much more significant down payment than the industry had seen before.

Q. In your opinion, did down payments of this higher amount in some way contribute to more healthy competitive conditions in the industry?

A. Well, had this 30 percent requirement been in effect in 1959, 1960, 1961, there would have been much fewer centers opened up.

In that sense it would have—there would have been less competition.

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Q. Can you explain that a little more?

A. Yes. The reason that many proprietors came into the business was because they couldn't get in with so little money. If you only paid 10 percent down, it is a lot easier than if you had to pay 30 percent, they were dealing with a lot of money for the opening of a new center. So the difference between 10 percent and 30 percent is a lot of money if you multiply by 500,000.

Q. Now, do you have any knowledge of whether or not the new standard, 30 percent, was carried out by Brunswick in practice?

A. No, I do not.

Q. Mr. Lieblich, would you be good enough to turn to page 11?

You see the first sentence—rather, the caps:

"As a matter of fact, Brunswick has found it necessary to operate bowling centers."

This didn't come as news in 1966; did it?

A. Sir, I don't know from where you are reading.

Q. Look at the bold caps in the margin.

The Court: Page 11.

A. Yes, I'm sorry.

Q. "As a matter of fact, Brunswick has found

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it necessary to operate bowling centers."

This was not news in San Diego, was it?

A. No, we were all aware of it.

Q. And at the top line on 11:

"Bowling centers fail because they are undercapitalized or suffer from inadequate management or because the present demand for bowling just does not justify their existence."

Do you know of any other reason, not given here, why bowling centers fail?

A. Well, overbuilding in the area, too many bowling centers having been installed.

Q. Now, in 1966, what was your opinion concerning the matter of overbuilding; did you have any opinion as to what the industry was like in 1966?

A. Oh, yes.

Q. What was that?

A. It was one of the worst years that the bowling industry had ever seen.

Q. And does that correlate in your opinion some way with the existence of overbuilding?

A. Well, it goes to prove my own judgment that there were too many bowling centers in business.

Q. Now, would you be good enough to take a look at page 9, the first sentence. The previous page

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contains bold caps, does it not: "As a matter of fact, Brunswick is enforcing conditions of sale," and then the first sentence on page 9 is, "Simply stated, this means that we expect to be paid on time for equipment and supplies that we sell."

What is your experience concerning whether or not that happened after San Diego?

A. I don't—our competitor in Puerto Rico, Star Bowl, I believe was still not paying Brunswick in 1966, or if it were paying, they were paying in very small amounts.

Q. Now, sir, would you be good enough to go to page 14.

Do you see the sentence: "As a matter of fact—" this is again in the margin—"BCO centers are offered for sale"?

A. Yes, I see that.

Q. Did you ever make any attempt to purchase any such centers?

A. On two occasions I communicated with Mr. Rudo of the Brunswick Corporation about our buying Fair Lawn Lanes in Fair Lawn, New Jersey.

Q. And what reply did you receive?

A. They weren't interested, or it wasn't timely, or they'd get in touch with us, but I never heard from Mr.

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Rudo after the second communication I sent to him.

Q. And once again, you had occasion to learn how many centers, in fact, were sold by Brunswick?

A. Yes.

Q. And again that number?

A. I believe Mr. Rudo said at the last examination they had sold two of the BCOD centers between 1965 and 1970.

Q. Now, Mr. Lieblich, did there come a time when you attended a convention of the BPAA in New York?

A. Yes.

Q. When did that happen?

A. I believe the convention at the New York Hilton was a year after the San Diego convention.

I think that was in June of 1967.

The Court: Are you finished with P-28 for the time being?

Mr. Hoffmann: Yes.

The Court: Take them back from the jury, please.

Mr. Hoffmann: I'd like to have marked as P-29 for identification a pamphlet bearing the legend, "The Name of the Game is How to Make Money, Brunswick Corporation Bowling

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Division, BPAA Convention, New York, June 16, 1967,"

(Exhibit P-29 marked for identification.)

Mr. Hoffmann: I think without ado I will offer P-29 into evidence.

The Court: Any objection?

Mr. Seeley: No.

The Court: Into evidence.

(Exhibit P-29 received and marked in evidence.)

Q. Would you be good enough, Mr. Lieblich, to look at page 3 of plaintiff's 29 in evidence.

Do you see this sentence, "Although Brunswick—" this is the first column, page 3—"although Brunswick has been the number one name in the industry for more than 65 years, we have never really participated as an operator until 1965."

Now, following that, is a reference to a self-sustaining situation. Do you see that?

A. Yes.

Q. "Now Brunswick is operating bowling centers, and through this experience gathering a considerable amount of information; consequently, we can also share your point of view;" and so on.

Then, "many of our centers which were

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formerly hopelessly delinquent to our Credit Department are now self-sustaining. These centers are offered for resale to independent businessmen where equity is available."

Once more, Mr. Lieblich, do you know of any other than the two referred to in your testimony of these Brunswick centers being sold to independent businessmen?

A. No, I do not.

Q. Now, do you have any knowledge concerning the other part of this sentence which I just read to you? This is at the time of the meeting in New York of June 16, 1967, the statement is made:

"Many of our centers which were formerly hopelessly delinquent to our Credit Department are now self-sustained"?

Do you have any knowledge of the truth or falsity of that statement?

A. Yes, I do.

Q. And what is that, sir?

A. I don't think the statement is entirely correct.

Q. In what way is it false or incorrect?

A. Well, by the time of this convention in New York when this—

The Court: Just a minute. Short recess.

(Short recess.)

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(After recess.)

The Court: Yes, Mr. Hoffmann.

By Mr. Hoffmann:

Q. Mr. Lieblich, you testified earlier that Brunswick opened centers of its own, is that correct?

A. Yes.

Q. Do you mean by that centers which it had constructed itself?

A. Yes, new ones.

Q. Have you seen any of those new centers?

A. Yes.

Q. Which ones?

A. Well, I have seen two of them.

Q. Where are those?

A. One in Fort Wayne, Indiana, and one just outside of Chicago. I think it is G-l-e-n-i-l-e. I forget how to spell it. It is outside of Chicago.

Q. Is that in Chicago Heights?

A. Yes, Chicago Heights.

Q. Can you describe the Chicago Heights center for us?

A. Yes. I think it had 24 lanes. It was a brand new, beautiful Brunswick center. It was just as nice as any of ours. It was fully carpeted. It had a very attractive snack bar, had a very nice cocktail lounge. It had all

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the latest Brunswick equipment in it. They had their speeded up mac es, their A-2 machines.

Q. When you say speeded up, A-2's, what do you mean by that?

A. As I said earlier, at about some point in 1963 Brunswick introduced an improved pinsetter, one that brought the ball back faster to the bowler. And they referred to that as their A-2 machine. And the installation in Chicago Heights had that new machine.

It also had their most advanced masking units. A masking unit is an area that covers the automatic pinsetter.

Now, I don't recall if the one in Chicago Heights had the new automatic scoring equipment. I know the one in——

Q. Is your memory depleted as to that; do you have any recollection one way or the other?

A. I know the one in Fort Wayne had the new automatic scoring equipment.

Q. Addressing yourself to Chicago Heights.

A. I think it did. I think it did.

Q. What is automatic scoring?

A. Well, it is something brand new that Brunswick has introduced. It is a machine, an electronic machine, which totals the bowler's score automatically. Instead of

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having the bowler, or the bowlers keep the record of their score, as they bowl each frame, this machine automatically flashes the total.

Q. Is it something like a computer?

A. Well, it has to be based on the computer concept. It is a very expensive piece of equipment.

Q. How much does it cost?

A. We don't have any. I have never bought any, but the price was quoted to me. I think it is almost $2,000 per lane, or maybe as much as $3,000 per lane. So on a 40-lane installation that would cost $120,000 to put it in.

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Q. If a center is equipped with automatic scoring, then, that $120,000 would be in addition to what is paid for the lanes and for the automatic pinsetting equipment, is that right?

A. Yes, it is something separate and apart from the lanes and pinsetters. It is just an additional piece of bowling equipment.

Q. What does it do, is it something that interests the bowler, do you think?

A. Yes, that is the sales effort that Brunswick makes: If you have this equipment, it will bring more bowlers into your place. It will enable you to take bowlers from another center into your place, because you now have the most up to date advanced equipment that there is.

Q. Does it replace the pad and pencil in keeping score?

A. Yes.

Q. And errors in arithmetic seem unlikely, is that right?

A. If it is free of computer bugs, yes.

Mr. Hoffmann: Miss Costello, will you please mark as Plaintiff's Exhibit 30 for identification an eight-page, triple spaced document entitled "A discussion of Brunswick Corporation" by John L. Hanigan, president and chief executive officer,

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before the New York Society of Security Analysts, with a date for release: After 2:00 p.m., Friday, June 6, 1969.

(Exhibit P-30 marked for identification.)

By Mr. Hoffmann:

Q. Mr. Lieblich, I show you Plaintiff's Exhibit 30 for identification and ask you if you have ever seen that before?

A. Yes.

Q. How did it first come to your attention?

A. A stock broker had attended a meeting in New York, before the New York Society of Security Analysts, where Mr. Hanigan, the president of Brunswick Corporation, addressed the New York Society. And he sent me a copy of the pamphlet that was handed out by Mr. Hanigan—or by Mr. Hanigan's staff—at the time of the presentation to the New York Society of Security Analysts.

Q. Do you know whether or not Mr. Hanigan delivered the remarks as reported here before the society?

A. Yes, he did.

Mr. Hoffmann: I will ask that it be admitted, if I may, as Plaintiff's Exhibit 30.

Mr. Seeley: No objection.

The Court: Into evidence.

(Exhibit P-30 received and marked in evidence.)

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Q. Mr. Lieblich, would you turn, please, to the bottom of page 4—the top of page 5 of these remarks. Do you see the three sentences there? I will read them to you.

"In the recreation field we have also been operating 170 bowling houses that we have had to repossess. Up until now these have contributed significant cash flow but book losses. This year they will be in the black. We have learned a lot about operating cash businesses and think that our technique can be applied to other fields in the future. We found the bowling business at retail is a good business and I am happy to say that this part of our operation, which was necessary as salvage, looks to be profitable for the future, whether we operate them or sell them as going businesses."

Now, sir, what did you understand Mr. Hanigan to mean by the last sentence, that is to say, "The business looks to be profitable for the future whether we operate them or sell them as going businesses"?

A. That they are going to make money from the operation of BCO, if they sold them or if they continued to operate them themselves.

Q. Have you had occasion to find out whether or not the remarks made by Mr. Hanigan here are correct? Let's take a look at them. He says, "We have been oper-

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ating 170 bowling houses that we had to repossess."

That's in 1969, June. Do you know whether that is correct or not?

A. I think the total was more than 170. If I could add it up, I think it was more than 170. I am sure it was.

Q. Where do you find the information as to the total?

A. Well, sir, after this case was started, you subpoenaed the Brunswick records, and they delivered to you, and then you gave to me, profit and loss statements on all of the houses being operated by BCOD from 1965. And each year you received from Brunswick the records for every subsequent year and you have given me all of those records that I might analyze each one.

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Q. Those are records coming from Brunswick itself, are they not?

A. Yes, sir.

Q. Now, the second sentence, "Up until now these have contributed"—referring to the 170 bowling houses—"these have contributed significant cash flow but book losses."

Do you know what the Brunswick records show as to that?

A. Yes.

Q. And what is that?

A. In 1965 all of the BCOD centers that were operated by Brunswick lost $2,171,000. And they had a cash loss that year of $2,681,000.

In the year 1966 the BCOD houses had a loss of $1,136,000, and they had a positive cash flow of $986,000.

In 1967 all of the BCO houses——

Excuse me. May I change my answer, please, Mr. Hoffmann? I was looking on the sheet of another set of figures.

In 1965 the total loss of the BCOD centers was $2,298,000 and the cash loss was $2,872,000.

In 1966 the loss of all the BCO centers was $1,409,000. There was a positive cash flow of $856,000.

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In 1967 all the BCO centers lost $1,406,000. Their cash flow was $1,295,000.

In 1968 the loss of all the BCO centers was $861,000. And their cash flow was positive, $1,924,000.

Mr. Hanigan's remarks were in June of 1969. So at that point there was a cumulative loss from these operations of $5,800,000. And from a cash standpoint they produced cash of about $1,100,000. It was in that context that he made this——

Q. Now, sir, what have you been reading from?

A. I am reading from a chart that I prepared, with the help of our accounting department, entitled "BCOD consolidated summaries." This was prepared from the sheets furnished us by Brunswick Corporation, under your subpoena.

Mr. Hoffmann: I am asking Miss Costello to mark as Plaintiff's Exhibit 31 for identification a spread sheet entitled "BCOD consolidated summaries" containing entries for each of the years 1965 through 1972, ending with a line purporting to show cash flow.

(Exhibit P-31 marked for identification.)

Q. Mr. Lieblich, I show you Plaintiff's Exhibit 31 for identification and ask whether that is the document about which you have just been testifying.

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A. Yes, sir; it is.

Q. And were these summaries, summaries of information furnished by Brunswick to us?

A. Yes, sir.

Q. Is that your testimony?

A. Yes, sir.

Q. Do they in any way depart from the information, to your knowledge?

A. No, sir; I am holding in my hand the summaries that we received from Brunswick for their consolidated operations each year.

Mr. Hoffmann: I offer Plaintiff's Exhibit 31 in evidence.

The Court: Any objection?

Mr. Seeley: I would like to ask one question, your Honor.

The Court: What is it?

EXAMINATION ON VOIR DIRE.

By Mr. Seeley:

Q. Is this limited to domestic bowling subsidiaries of BCO or does it include some of its foreign operations, as well?

A. Just Canadian.

Q. Just Canadian?

A. American and Canadian. It is from the summary sheets,

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Mr. Seeley.

Mr. Seeley: I object to it on the ground of its including the Canadian, which is not involved in this case at all.

The Court: Why should I permit any statistical information pertaining to the Dominion of Canada?

Mr. Hoffmann: Your Honor, I don't press the exhibit because of the fact, in anticipation of a possible objection, I also have a document which I would like to have marked as P-32 for identification, which eliminates Canada.

The Court: American.

Mr. Hoffmann: Confined only to the American centers.

(Exhibit P-32 marked for identification.)

The Court: May I ask why you offered P-31? Did you think Mr. Seeley was out of the room, or something?

Mr. Hoffmann: No, your Honor. We thought the difference was so miniscule, so small, as to not to make the separate calculation necessary. However, at the last moment, operating under the doctrine which is called an abundance of caution—the kind of doctrine which awakens me in the middle

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of the night—we prepared the other.

The Court: I would call it legal sleight of hand.

Mr. Hoffmann: I want to point out to your Honor that—sleight of hand or not, with great respect—the difference between the two summaries are very small, indeed.

By Mr. Hoffmann:

Q. I show you Plaintiff's Exhibit 32 for identification and ask you if that is the summary prepared in the way you described, but eliminating the Canadian-operated centers?

A. Yes.

• • •

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DIRECT EXAMINATION (Continued).

By Mr. Hoffmann:

Q. Mr. Lieblich, is it fair to say, from your testimony, that other than the elimination of the Canadian centers, plaintiff's Exhibit 32 corresponds with 31, in that you received the information from Brunswick, is that correct?

A. Yes, it comes from their consolidated statements for each year.

Mr. Hoffmann: I offer 32 in evidence.

Mr. Seeley: No objection.

The Court: Into evidence.

(P-32 received in evidence.)

Mr. Hoffmann: If I may, your Honor, I would like to circulate P-32 amongst the jurors.

The Court: All right.

(Documents handed to the jurors.)

Q. Mr. Lieblich, what does this "Domestic Operations Only Summary" purport to show, what is it designed to show?

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A. A number of centers that Brunswick operated at the end of each year, the number of lanes that were operated by them during that year, the number of tenpin lanes that are included in the figure above, the profit or loss of the total of all the BCOD houses for the year, the depreciation that was reflected on the Brunswick books that year, and then the cash flow.

Q. Now, sir, I note in the third entry, the number of tenpin lanes, that you use the phrase, "Tenpin Lanes." Are there any other kind of lanes on which people bowl?

A. Yes, there are a relatively small number of bowling centers throughout New England and Canada which have either candlepin lanes or duckpin lanes. New England was traditionally a center of duckpins, and candlepins. And despite the great inroads that have been made in New England and elsewhere with the larger pins, called the tenpins, there still persists some few houses which have all, or some, tenpin or candlepin lanes.

Q. Does the subtraction of candlepin lanes or duckpin lanes significantly affect any of the results in the consolidated operations of the Brunswick domestic centers?

A. No.

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The Court: As a matter of curiosity, do automatic pinsetters take care of candlepins and also duckpins?

The Witness: There is a different type of machine, sir. It is an automatic machine. It is less expensive, less complicated than the tenpin machine.

The Court: All right.

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Q. Now, if you go down the column for us again, take the first column, please.

After you have established these figures for lanes and number of centers, number of ten pin lanes—incidentally, does the third entry, the number of ten pin lanes, when subtracted from the number of lanes, give you the picture of how many candle pin or duck pin lanes are around?

A. Yes. As an example, in 1965, if you subtract 3,519 ten pin lanes from 3,629, that means that there were 110 either duck pin or candle pin lanes that Brunswick was operating in the domestic division.

Q. Now, would you be good enough to compare this with 1972?

A. In 1972 there were, where we have a total of 5,200 lanes in all, number of ten pin lanes, 5,110, so that means in 1972 there were only 90 duck pin or candle pin lanes operated by Brunswick.

Q. These are called duck pins?

A. Yes.

The Court: Does that have the rubber around it——

The Witness: I think so, sir.

Q. Would you go to the next line, profit and loss, please, after the number of ten pin lanes?

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A. Yes.

Q. What is the meaning of the parenthesis, close parenthesis, with the word "loss" in it; is that the way the numbers are set forth?

A. Yes. If there is a loss in a year, that's with a parenthesis around it. If there is no parenthesis around it, it means there was a profit during that year.

Q. Now, does that line also mean that from Brunswick's own records, there is an indication of a loss running from 1965, 1966, 1967 and 1968?

A. Yes.

Q. What happened in 1965?

A. It made a profit.

Q. Coming to the bottom line, the cash flow, does that indicate a negative, the first entry in parenthesis in 1965, is that a negative entry?

A. Yes, cash loss, $2,681,000 during that first year.

Q. Could you describe to the jury what you mean by "cash loss"?

A. That was what was the difference between the money they took in and the money they had to pay out to make all of their expenses.

Q. Now, sir, on the next to the last line there is "depreciation."

A. Yes.

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Q. What is the source of that information about depreciation?

A. Brunswick's records.

Q. Is that some calculation you made, depreciation?

A. No, it comes from their consolidated records.

Q. Did they call these numbers depreciation; is that their word?

A. Yes.

Q. Does it follow from what you have just said that when you find in 1965 an entry of $879,000 under depreciation, that's what Brunswick in its records said was depreciation; is that it?

A. Yes.

• • •

DIRECT EXAMINATION (Continued).

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By Mr. Hoffmann:

Q. Now, Mr. Lieblich, you testified that you observed some new construction of Brunswick; is that right?

A. Yes.

Q. Do you have any knowledge of the number of new installations which Brunswick made in recent years, that is to say, since 1965?

A. I know a good many of them, yes.

Q. Where is that?

A. There is one in Buffalo, New York; there is one I saw in Chicago Heights; there is one in Fort Wayne, Indiana; there is one in Louisville, Kentucky; there is one in Orange County, I believe, California; there is one in Houston, Texas.

That's all I can think of right now, Mr. Hoffmann. There may be others.

Q. Do you know whether or not Brunswick is operating these new centers itself?

A. Oh, yes, sir.

Q. Mr. Lieblich, did there come a time when the debts of Bowl-O-Mat were paid off to Brunswick?

A. Yes.

Q. About when did that happen?

A. January—well, beginning in October of 1965,

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October 1965 we began to borrow money from banks around the country, and first we paid them in full for Muncie Bowl-O-Mat; then a month or two later we borrowed money from a bank in Detroit and we paid them in full for our Skor Lanes Bowl-O-Mat.

Then in January of 1966 we borrowed almost a million dollars from the Franklin National Bank in New York and the New Jersey Bank & Trust Company in Paterson, they did this together, and with that money all that was owed was the money due on Indianapolis.

In March or in April of 1966 we borrowed an additional $175,000 from a bank in Indianapolis, and with that

we paid in full every equipment obligation of all of our companies to Brunswick.

Q. By what date was the debt paid in full?

A. I believe in April of 1966. Might have been a month or so before then, but it was generally March or April of 1966.

The great bulk was given to them in January 1966.

Mr. Hoffmann: Your Honor, I have a document dated October 21, 1964. I have shown it to my adversary. He has kindly indicated that I need not give him a copy.

I think I have his consent to use the document. I unfortunately don't have copies, I am

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wondering, since I see no need to pass them around to the jury, if I can have them marked and show them to you and to the witness.

The Court: Give me a short legend on each one.

Mr. Hoffmann: A communication, J. G. Thomas, and then above, Mr. K. P. Woelfel, and the subject is apparently Mr. Dan Lieblich, National Bowl-O-Mat, the date of communication October 21, 1964, and also on the face is an indication of Mr. John A. Seufert.

(Marked Exhibit P-33 for identification.)

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Q. Mr. Lieblich, I show you plaintiffs' Exhibit 33 for identification and ask you if you can tell us what it is?

A. Yes, it is a document that you gave me, Mr. Hoffmann, after you had subpoenaed the Brunswick records. It is from Brunswick's interoffice correspondence.

Mr. Hoffmann: May I offer it in evidence as plaintiff's Exhibit 33.

Mr. Seeley: No objection.

The Court: In evidence.

(P-33 received in evidence.)

Q. Who is Mr. J. G. Thomas?

A. He is the gentleman sitting there in the rear row on the right-hand side.

Q. And in the year 1964, if you know, what position did he occupy for Brunswick?

A. I think his title then was Director of Sales for the Brunswick Bowling Division.

Q. Did you have any dealings with Mr. Thomas prior to October 21, 1964?

A. Oh, yes, over many years.

Q. I read you from the fourth paragraph of this, "Mr. Lieblich's chain, national Bowl-O-Mat, Inc., is one of the best we have, and his credit is excellent.

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If we can help him solve this difficult problem in Florida, we should do so."

Do you know the problem in Florida to which that statement relates?

A. Yes. It was the sale of our Fort Lauderdale Bowl-O-Mat, or some other arrangement to handle that indebtedness I talked about yesterday.

Mr. Hoffmann: By the way, if I may say so, your Honor, on the one copy of plaintiff's 33, that you have in your hand, that is in evidence, there are some markings put there by counsel and I ask that they be disregarded, including the circling of the matter which I just read.

The Court: My only concern with the exhibit, even though your adversary has no objection to it, is that you will have to make some new copies of it and excise the parts that are marked off in red, because I dont' think it is fair to pinpoint them, in the event—

Mr. Hoffmann: I didn't realize at the time it was the sole copy we had. I'll be glad to do that in the morning, your Honor.

The Court: All right.

Mr. Hoffmann: There are no markings on

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plaintiff's Exhibit 34 for identification, which is a copy of a letter, William J. Blanks, National accounts manager of Brunswick Corporation, to Mr. Daniel P. Lieblich, under date of August 27, 1965.

(P-34 marked for identification.)

Q. Mr. Lieblich, I show you plaintiff's Exhibit 34 for identification and ask you if you can tell us whether you have seen this before?

A. Yes.

Q. And how did it come to you?

A. This is a letter that was sent to me on August 27 from Bill Blanks of the Brunswick Corporation.

Q. I notice that this is a copy and not an original. Is this a copy of the letter which came to you?

A. Yes.

Q. Would you look at it and make sure?

(Witness complies)

A. Yes.

Mr. Hoffmann: I offer plaintiff's Exhibit 34 into evidence.

Mr. Seeley: No objection.

The Court: Received in evidence.

(P-34 received in evidence.)

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Q. I read to you the following sentence in the first paragraph of this letter. Perhaps I should stand next to you, so that you can see it yourself.

With your Honor's leave, may I do this?

The Court: Yes.

Q. (continuing) "I want you to be assured that corrective action has been instituted."

Do you know what that reference is to?

A. Yes, we had been having quite some difficulties with Brunswick in the Summer of 1965 in doing some resurfacing, they were quite late in doing resurfacing for us, there was some additional equipment we had bought for the Saginaw Bowl-O-Mat, and that was delayed. There were a good many difficulties and problems that had arisen and Bill Blanks, being their national accounts manager, was the person I had written to, or called on the telephone—called him at his home once—trying to straighten out some of these difficulties.

And that is what he meant by corrective action.

Q. The next sentence, "Whether you believe it or not, National Bowl-O-Mat Corporation is a very valued customer of the Brunswick Corporation, and we here, at the home office, are quite concerned when

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aggravations arise that cause you to be unhappy."

Do you have any specific subject to which that sentence I just read relates?

A. Well, Bill Blanks was always very cooperative in trying to help solve all of the problems that we had with Brunswick.

Q. Do you remember what his function was in the organization at the time?

A. Yes, his title was national accounts manager.

Q. And in that function, what dealings did you have with him?

A. Well, Bill was appointed by Mr. Rudo to handle the chains—I think that was his major function. And since our company had 10 or 11 operations, we were considered a chain operation. And we used to report and relate our problems to Bill Blanks. He was always very helpful to us.

Mr. Hoffmann: I ask that this be marked as plaintiff's Exhibit 35 for identification, a communication, J. G. Thomas to H. T. Chadwick, under date September 13, 1966.

(P-35 marked for identification.)

Q. Mr. Lieblich, I show you what has been marked as plaintiff's Exhibit 35 for identification and ask if you can tell us, sir, what it is?

[599]

A. Yes. This is another document that you gave me, Mr. Hoffmann, after you had subpoenaed the Brunswick records. And this is a Brunswick interoffice communication from Mr. Thomas—Jack Thomas—to Mr. Chadwick, with copies to various executives in the Brunswick organization.

Q. Mr. Lieblich, the date of this communication is September 13, 1966, is that right?

A. Yes, sir.

Q. And was this at a point in time, according to your testimony, after you had paid your debts to Brunswick?

A. This is six months after they had received payment in full of all the obligations of all of our subsidiaries on equipment obligations.

Q. Do you have any recollection when the complaint in this law suit was filed?

A. Yes, sir.

Q. When was that, sir?

A. It was filed in June of 1966.

Q. Prior to this communication?

A. Yes.

Q. Would you be good enough to read it aloud?

A. Yes, this is Mr. Thomas' memorandum to Mr. Chadwick, with copies to the various Brunswick executives.

[600]

> "This will confirm our phone conversation of Monday, September 12th in which I instructed you to inform Fair Lanes, Inc., of Baltimore, and National Bowl-O-Mat of Paterson, New Jersey, that all purchases effective Wednesday, September 14th, by these corporations from Brunswick, for supplies, equipment, service, et cetera, must be on a cash or a c.o.d. basis."

[601]

Q. Mr. Lieblich, if you know, who is, or what is Fair Lanes, Inc., of Baltimore?

A. Yes. Other than Brunswick, which operates almost 200 bowling centers, Fair Lanes is the largest and most profitable bowling center in the United States—bowling chain in the United States.

Its president is Mr. Sidney Friedberg, his father had organized the company probably 30 years ago, it had almost 40 bowling centers in operation, and since I received its annual reports every year I can say it has always been a very profitable company and is today the most profitable, and was in 1966, the most profitable of all of the bowling chains.

Q. Can you tell me, sir, whether or not Mr. Friedberg or Fair Lanes was engaged in litigation with Brunswick?

A. No—no.

Q. Mr. Lieblich, do you know of any reason why at the point of time when this letter was received you were put on a c.o.d. basis?

• • •

[604]

Q. Mr. Lieblich, had you at any time prior to this communication of September 13, 1966, been placed on a cash on delivery basis by Brunswick?

A. Never.

Q. And is what you say true of the days when your debts to Brunswick were at their highest?

A. We were always able to take a discount in paying our bills to Brunswick whenever our equipment bills permitted that.

Q. When you speak of a discount, to what do you refer; what kind of discount?

A. Over the years we had to buy parts for our machines from Brunswick, and those purchases permitted a discount if the bills were paid within a certain period of time, and our accounting department was always very careful to pay the bills as promptly as possible, to take the discount.

Q. Do you know about how much money Brunswick had received from Bowl-O-Mat in connection with the purchase of equipment prior to the receipt of this letter?

A. Yes. I think we paid them approximately $7 million over the years for equipment, resurfacing, parts, items for the machines, pro shop supplies we bought from them.

Q. What is involved in paying c.o.d.; what

[605]

physically happens when you are making payments on a cash on delivery basis?

A. Well, you must have cash available at the premises when a parts order from Brunswick would come in.

If the manager of one of our centers would order $2,000 worth of machine parts, he'd have to have that $2,000 sitting there in order to pay it to the truckman who brought the Brunswick equipment.

Mr. Hoffmann: I'd like to have marked as Plaintiff's 36 for identification what appears to be a copy of a memorandum, Arnold E. Taras, to Daniel Lieblich, September 13, 1966.

(Exhibit P-36 marked for identification.)

[606]

Q. Mr. Lieblich, I show you what's been marked as Plaintiff's 36 for identification, and I ask you if you can tell us what that is?

A. Yes. Mr. Taras was at that time the director of our bowling division.

This was a memorandum he sent to me telling me that Mr. Chadwick of the Brunswick Corporation had called at the instruction of Mr. Jack Thomas to put us on a c.o.d. basis.

Q. Do you notice the last sentence in that memorandum?

A. Yes, I do.

Q. And what is that?

A. This is Mr. Taras saying, "I began questioning him in a general way why, and he said he didn't know, but that he was only following the instructions of his boss, Jack Thomas."

Mr. Hoffmann: I offer in evidence Plaintiff's Exhibit 36.

The Court: Any objection?

Mr. Seeley: No.

The Court: Into evidence.

(Exhibit P-36 received and marked in evidence.)

Mr. Hoffmann: I ask that a letter from Lieblich to Hanigan, president of Brunswick, under

[607]

date, September 14, 1966, be marked as Plaintiff's 37—it is a letter from Daniel Lieblich to Mr. Hanigan——

(Exhibit P-37 marked for identification.)

Mr. Hoffmann: Before questioning the witness about 37, your Honor, just as a matter of housekeeping, I now offer in evidence 35, to which counsel said there was no objection.

The Court: Into evidence.

Mr. Seeley: May we come to the side bar?

The Court: Yes, step up.

(Counsel approached side bar, and the following proceedings were had without the hearing of the jury:)

The Court: Which one are you referring to now?

Mr. Seeley: 37.

The Court: He hasn't offered it into evidence. He offered P-35.

Mr. Seeley: I'm sorry.

The Court: He neglected to offer P-35.

(Counsel returned from side bar, and the following proceedings were had within the hearing and presence of the jury:)

(Exhibit P-35 received and marked in evidence.)

[608]

By Mr. Hoffmann:

Q. I show you a copy of Plaintiff's 37 for identification, and I ask you if you can tell us what it is.

A. Yes. This is a letter that I sent to Mr. Hanigan, the president of Brunswick Corporation, on September 14, after I received the memorandum from our director of operations, advising me that Mr. Thomas and Brunswick had put us on a c.o.d. basis.

Q. That memorandum that you refer to which you received was dated when?

A. September 13.

Q. That is, the day before?

A. Yes.

Q. Now, sir, do you have any recollection of receiving a reply to this letter of September 14, 1966?

A. Yes, I do.

Mr. Hoffmann: I ask that this document be marked as Plaintiff's 38 for identification. It is a copy of a letter, James F. Urbanik, president of the bowling division of Brunswick, to Mr. Daniel Lieblich, under date of September 23, 1966, and it states that it's been—that it is in response to Mr. Lieblich's letter of September 14 to Mr. Hanigan.

(Exhibit P-38 marked for identification.)

[609]

Q. Do you have before you P-38 for identification, the letter from Mr. Urbanik to you?

A. No, I do not.

Q. Is that letter in your hand, Plaintiff's 38 for identification, Urbanik to you, of September 23, 1966, is that the reply to which you just referred?

A. Yes, it is.

Q. Now, sir, coming back to P-37, that is to say, your letter to Hanigan of September 14, without reading it into evidence at all, what is the sense of it; what were you saying?

Mr. Seeley: I object. It's not been received in evidence so far as I know.

Mr. Hoffmann: Your Honor, I'm trying to make a proffer of the receipt of both of these exhibits. I want to show that these were interlaced one to the other, it was a normal business communication in the conduct of the business of both companies, and the internal substance has some bearing on that, it seems to me, in the sense that Mr. Lieblich says what he was doing and the other letter is responsive to it.

But be that as it may, I am quite prepared to offer them both at this time on the ground that I think they have been properly authenticated and

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made ready as exhibits.

Mr. Seeley: No objection to P-38.

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The Court: P-37 and P-38 into evidence. The third paragraph of the letter dated September 14, 1966, will be deleted.

(Exhibits P-37 and P-38 received into evidence.)

By Mr. Hoffmann:

Q. Mr. Lieblich, I address your attention to P-37, your letter to Mr. Hanigan, to the fourth paragraph, which I read to you, "Since the filing of our Complaint in June our subsidiaries have continued to purchase machine parts and supplies from your company and I know of no instance where there has been any unreasonable delay in the payment of any invoice by any one of our subsidiaries."

Was any instance of such unreasonable delay pointed out to you by Brunswick at or about that time?

A. No, sir.

Q. I now ask you to look, please, at P-38, which is Mr. Urbanek, president of the Bowling Division, his letter to you under date of September 23, 1966.

A. Yes.

Q. Addressing yourself, if you will, to the listing of open accounts of National's subsidiaries, do you see that on the first page?

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A. Yes, I do.

Q. "I am further advised that with respect to open accounts of National subsidiaries that $234.27 is past due from 1-30 days."

What were the normal credit terms, what was the practice with respect to your dealings with Brunswick?

A. 60 days would have been normal, unless there was a discount provided. Then we paid it promptly as possible to obtain the discount.

Q. Then the reference to the next item is $310.94 past due from 31-60 days. Anything unusual about that, sir?

A. No, sir. Very often there was a delay in getting invoices from Brunswick to our field operations, or then from the field operations to our home office, so they could be paid. So every once in a while, there was a little delay occasioned by the late receipt of an invoice. Sometimes we would get a statement from Brunswick in our Accounting Department, and would look for all the supporting invoices from the field operations.

Sometimes they wouldn't pay a bill until they have all the supporting documentation.

Q. Finally, there is an item of $8,267.24,

[619]

which is listed as past due over 60 days. Do you have any recollection of that item?

A. Yes, I do.

Q. Would you tell us about it?

A. Back in 1961, they had sent an order of bowling pins to Skor Lanes. They sent two bills for it, in other words, double billing. And for years and years we kept writing to tell them: Please disregard the second bill. Because we only got one shipment of pins, and it was paid for.

This is why the big balance was carried for so many years.

Mr. Seeley: If the Court please, I ask that the letter, Plaintiff's Exhibit 38, be read to the jury in its

entirety. I believe I have a right to ask that, since part of it has been read and the remainder is relevant in context to the part that was read.

Mr. Hoffmann: Your Honor, I have no objection. I would think that the more proper practice, with great respect to Mr. Seeley, would be that he read it himself at the time when he puts in his case. But I certainly have no objection to reading it now, if that is his desire.

The Court: Read it.

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Mr. Hoffmann: All right.

The Court: Just tell the jury what it is.

Mr. Hoffmann: This is a letter which has been received in evidence as Plaintiff's 38. It is dated September 23, 1966. And it is from James F. Urbanek, who is the president of the Brunswick Bowling Division, and it is in response to the letter of September 14, about which Mr. Lieblich is testifying, which he wrote to Mr. Hanigan. And the letter reads as follows:

"Dear Dan:

"Your letter of September 14 to Mr. J. L. Hanigan, President, has been referred to me for reply.

"In our judgment, the difficulties of doing business with National and its subsidiaries do not warrant the extension of further credit to your companies. The payments which your companies have made to Brunswick over the past years have been the subject of recurrent haggling, negotiation, meetings, travel,

legal expenses, etc., all of which have resulted in excessive burdens and costs to Brunswick.

"Moreover, this state of affairs still continues. As recently as this summer, it was

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necessary for us to place for legal action the collection of the monies due and owing Brunswick for some masking units at Saginaw Bowl-O-Mat, Saginaw, Michigan; an account which had been the subject of haggling by you for months and on which payments ought to have been made commencing November, 1965. I am further advised that with respect to open accounts of National subsidiaries"——

And this is the matter I questioned the witness about before——

"$234.27 is past due from 1-30 days

"$310.94 is past due from 31-60 days, and

"$8,267.24 is past due over 60 days.

"In short, Brunswick has had enough of these problems and simply cannot afford to attempt to do business with a customer on credit or on open account basis where the burden, expenses and difficulties of doing so suggest that it may not be worthwhile.

"I regret that you construe our policy as some sort of harassment by Brunswick. On the contrary, it seems to us simply that by minimizing the business contacts with your firm (by placing sales on a cash basis) Brunswick avoids

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the harassment and burden of attempting to do business with National on a credit basis.

"Yours truly, James F. Urbanek, President, Bowling Division."

[623]

Q. Now, Mr. Lieblich, I ask you, sir, do you know of any other bowling chains existing as of September 1966 that were current in their obligations to Brunswick?

A. I don't believe there was anyone that had paid Brunswick in full.

Q. Sir, in the past, prior to this letter, had you had any difficulties in getting short-term credit, such as 60 days, or 90 days, in handling your accounts with Brunswick?

A. Never?

Q. Did anybody from Brunswick, Mr. Urbanik, Mr. Hanigan, Mr. Thomas, or anybody else from Brunswick, sir, ever tell you that doing business with you involved so many problems that they simply couldn't afford to do business with you on a credit basis?

A. When Brunswick brought out its new A-2 machine, Bill Blanks came from Chicago and he said I was the first chain president they were going to contact about buying all their new A-2's. They were always calling us when there was any new Brunswick equipment on the market to see if we wouldn't buy it from them.

Q. Reference is made in the chart that Mr. Seeley insisted that I read to the following:

"In our judgment, the difficulties of doing business

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with National and its subsidiaries do not warrant the extension of further credit to your companies."

Do you know what these difficulties of doing business are to which Mr. Urbanek refers?

A. Well, they had already made a profit of $3½ million on us.

Mr. Seeley: I move that be stricken, your Honor.

The Court: It will be stricken and the jury will be instructed to ignore it.

Q. Would you try to answer my question, please.

The Witness: Will you read the question? I thought I was responsive.

(Question read as follows:

"Question: Do you know what these difficulties of doing business are to which Mr. Urbanek refers?")

A. Yes, we had filed this lawsuit, antitrust lawsuit, against Brunswick.

Q. Do you know of anything else to which this reference might be made?

A. We paid them in full. We were still buying parts from them. We have to buy parts from them to keep our machines going.

Q. Look, please, at the next paragraph, "Moreover, this state of affairs still continues."

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The Court: Referring to which exhibit?

Mr. Hoffmann: P-38, the third paragraph.

Q. (Continuing.) It starts, "Moreover, this state of affairs still continues. As recently as this summer, it was necessary for us to place for legal action the collection of the monies due and owing Brunswick for some masking units at Saginaw Bowl-O-Mat, Saginaw, Michigan."

Will you tell us what that reference is to?

A. Yes. This was one of the matter that Bill Blanks had apologized about, his letter that we read from before. We did buy some new masking units from Brunswick in the summer of 1965. And after considerable delay in installing them—our desire to have them was part of my understanding with Bill Blanks—we wanted to have them installed before the league season opened. We wanted our bowlers to see that we were making some changes in the center. They arrived very late. And then they sent us the wrong ones. They sent us the wrong color. And there were a lot of problems that arose with respect to that. We did pay the bill after some discussion about it.

Q. You referred a moment ago in your testimony to this being a matter about which William Blanks apologized. I show you Plaintiff's 34 in evidence and ask you if you can find and read aloud for us what it is

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you referred to as his apology.

A. Yes. Mr. Blanks' letter, at the end of August 1965, at the bottom of page 2 he talks about the delay in the masking units.

Do you want me to read it, sir?

Q. Please.

A. "Due to the tremendous backlog of orders at our Muskegon factory, and because there are no experienced personnel that can be hired on a part-time basis to assist in removing this log jam, the special color masking units for Saginaw Bowl-O-Mat will be shipped on September 1, 1965. You could tie me to the 'whipping post and give me forty lashes with a cat-o'-nine-tails' and not hurt me any more than I am hurt because of the delays we have experienced in getting these masking units shipped and installed at Saginaw.

"I will do everything in my power to make these past problems only seem like a bad dream and will devote all energies to making our future relationship more pleasant for National Bowl-O-Mat and Brunswick Corporation."

The Court: What is the date of that?

The Witness: This is August 27, 1965.

Q. That reference of Mr. Urbanek to Saginaw, is that what that is about?

[627]

A. I think it is, yes.

Even after Bill Blanks' nice letter, when the masking units arrived, they were still the wrong color. And we had to have them repainted in Saginaw after they were put up. This is my best memory now.

Q. Plaintiff's Exhibit 38 indicates your indebtedness, that is to say, open accounts, is that right?

A. Yes.

Q. Is that what you understand open accounts to mean?

A. Yes, recent invoices.

Q. And not paid, isn't that so?

A. Yes.

Q. Could you just approximately tote up what those three items add up to?

A. One is $234.27, the other one is $310.94. They total $544 that was past due for 60 days.

Q. The grand total is under $9,000, isn't that so?

A. Well, $8,267 had to do with those double order of pins from 1961.

Q. But—

A. Adding those, it still would be under $9,000, even including the double billing for the pins in 1961.

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Q. I ask you, sir, over the years has not Bowl-O-Mat from time to time, or even month to month, owed a great deal more than $9,000 to Brunswick prior to its settlement in full?

A. Oh, yes.

Q. Will you give us some picture of the highest amount that had been owed at different months, just approximately, from your memory?

A. Five, six million dollars.

Q. And, sir, had there been any threat or indication that because of your indebtedness to Brunswick, when you owed monies running into the millions of dollars, that you would be put on a cash basis?

A. No, sir.

Mr. Hoffmann: Your Honor, could I have a minute for arranging papers?

The Court: Yes.

(Counsel arranges papers.)

Q. Mr. Lieblich, in your testimony the other day you referred to an attempt made by you to acquire Fair Lawn Lanes, is that correct?

A. Yes.

Q. Can you tell us, please, succinctly, what it was that you did, what Brunswick did—I'm sorry, what Bowl-O-Mat did in that direction?

[629]

A. Yes. Soon after the bankruptcy sale in Newark, when Brunswick bought all the American National Bowling Corporation centers, including Fair Lawn Lanes, I wrote to Mr. Rudo and asked him could we purchase Fair Lawn Lanes from Brunswick.

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Mr. Hoffmann: I ask that a copy of a communication from Mr. Lieblich to Milton Rudo, dated April 9, 1965, be marked as Plaintiff's 39 for identification.

(Exhibit P-39 marked for identification.)

Mr. Hoffmann: And I ask that as P-40 for identification, there be marked as P-40 for identification a copy of a letter, Rudo to Lieblich, under date of April 19, 1965, in response to that April 9, 1965 letter.

(Exhibit P-40 marked for identification.)

By Mr. Hoffmann:

Q. Do you have the communication of April 9—

A. No.

Q. Mr. Lieblich, I show you Plaintiff's 39 for identification and I ask you if you can tell us what it is?

A. Yes. This is a letter that I wrote to Mr. Rudo after Brunswick had bought the Fair Lawn Lanes at the bankruptcy sale in Newark, expressing our interest in acquiring Fair Lawn.

Mr. Hoffmann: I offer P-39 into evidence.

Mr. Seeley: No objection.

The Court: So ordered.

(Exhibit P-39 received and marked in evidence.)

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The Witness: May I correct that?

It was Fair Lawn, and the possibility of one or two others, I was interested also in acquiring Interstate Lanes in Ramsey.

Q. I show you what appears to be a copy of a letter, Rudo to Lieblich, under date of April 19, 1965, marked as Plaintiff's 40 for identification.

Have you seen that before?

A. Yes.

Q. What is it?

A. This was Mr. Rudo's reply to my letter about the purchase of Fair Lawn Lanes and one or two others.

Mr. Hoffmann: I offer Plaintiff's 40 into evidence.

Mr. Seeley: No objection.

The Court: So ordered.

(Exhibit P-40 received and marked in evidence.)

Q. Addressing yourself to P-40—

A. I can't hear you, sir.

Q. Addressing yourself to 40, please, that is to say, the letter of April 19, 1965, from Mr. Rudo to yourself, do you notice the second paragraph?

A. Yes.

Q. "As I informed you when you and I talked, we will be selling these bowling establishments as

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businesses and not as numbers of lanes for equipment."

A reference is made to a conversation, is it not?

A. Yes.

Q. Did such a conversation take place?

A. Yes.

Q. When did it take place in relation to this letter of April 19?

A. I think it was between my letter to Mr. Rudo of April 9 and his reply of April 19.

Q. Can you tell us the substance of it?

A. Yes. When he received my letter he called me, and I said, "Milt, we'd like to buy Fair Lawn, it is right next to our Paramus center, and Ramsey is not far away, and we'd like to work out arrangements to purchase it."

Q. And do you recall what Mr. Rudo's reply was?

A. He said I would hear from him.

Then I received this letter of April 19.

Q. Notice, please, the third paragraph of the letter of April 19, 1965, that is to say, the letter from Milton Rudo to you:

"Recently one of our people was told that you, Fair Lanes and Mr. Olshan of New York had pooled together a considerable sum of money and had bid for many of the

[633]

AIBC houses."

Do you know to what that refers?

A. Yes. Prior to the bankruptcy sale I did have certain conferences with the president of Fair Lanes and Mr. Olshan, an attorney from New York, who represented various bowling proprietors, to see if we couldn't put together a certain sum of money, and we'd appear at the bankruptcy sale and try to buy ourselves some of these houses.

As I testified yesterday, the day before the sale I met with our Board of Directors, and we decided that we should not participate in that arrangement, and I didn't appear in court that day, and we made no effort to bid at the bankruptcy sale against Brunswick.

Q. Then the next sentence after that in Mr. Rudo's letter:

"I was a little surprised to hear this, Dan, in light of the telephone conversation you and I had,

but I am sure that there were good reasons for you to take this position."

Was there anything in the telephone conversation which sheds some light on this sentence here?

A. Yes. At that time Mr. Rudo couldn't understand why we were trying to hurt Brunswick by appearing at the bankruptcy sale to outbid them.

[634]

And I said, "Milt, we didn't. We had a talk with these people, but we didn't appear."

And still he wrote the letter anyhow.

Q. Do you have any knowledge of what Brunswick had paid to acquire the center at the bankruptcy sale?

A. Yes, that was one of the things that Mr. Rudo had talked to me about on the telephone, he said the acts of bidding at the sale cost Brunswick an extra 400-odd thousand dollars. They had to increase the bids over the other people who were bidding at the sale. I think they spent $450,000 at the bankruptcy sale over the bids of the individual proprietors who were in court bidding for themselves.

Mr. Hoffmann: I ask that Miss Costello mark as Plaintiff's 41 for identification a copy of a letter, Lieblich to Mr. Milton Rudo, under date of April 23, 1965.

(Exhibit P-41 marked for identification.)

Q. Mr. Lieblich, I show you Plaintiff's 41 for identification and I ask you if you can tell us what it is?

A. Yes. When I received Mr. Rudo's letter of April 19 about Fair Lawn and the other centers, that was my reply to him.

Q. And did you receive any reply to your letter

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of April 23?

A. No, I had asked in this letter for copies of operating statements—I don't think I did, Mr. Hoffmann. I may have, but I never received the operating statements that I had asked for in order to be able to determine what kind of an offer could be made to purchase Fair Lawn.

Q. Your letter refers, does it not, to the possible purchase of Fair Lawn?

A. Yes.

Q. And when you say, "We would be pleased to discuss the purchase of the center now if we could examine the operating figures for the last few years," did you receive any reply to that, either orally or in writing, from Mr. Rudo?

A. No, I never received the figures.

Q. Did you receive from Mr. Rudo or anyone else representing Brunswick any further communication concerning the possibility of your purchasing Fair Lawn or the Fair Lawn operation, as it is described here?

A. I don't believe so. There may have been a reply saying that they'd have to mark time for a—for some months, my memory is hazy on that now, but certainly after those few months passed we never heard from them, and I never received any operating figures.

Mr. Hoffmann: Miss Costello, I ask you to

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Plaintiff's 42 for identification a copy of a letter, Rudo to Lieblich, dated May 13, 1965.

(Exhibit P-42 marked for identification.)

Q. I show you what's been marked as Plaintiff's 42 for identification and I ask if you can tell us what that is?

A. Yes.
Q. What is it?
A. Mr. Rudo did reply to my letter.

Mr. Hoffmann: I offer 42 into evidence.

Mr. Seeley: No objection.

The Court: Into evidence.

(Exhibit P-42 received and marked in evidence.)

Q. Does this P-42 serve to refresh your recollection?
A. Yes. It is what I thought I had recollected, he said that they weren't in a position then to discuss prices or terms, but that in two or three months they would be able, he said, in another two or three months the situation will be wrapped up in a neat package.

Q. Now, sir, after that time went by, the other two or three months after this letter dated May 13, 1965, did you hear any more from Brunswick concerning the possibility of your purchase of Fair Lawn?
A. No, I did not.

[637]

Mr. Hoffmann: Excuse me, your Honor. May I talk with counsel for a moment?

The Court: Sure. We'll take a short recess.

(Short recess.)

[638]

(After recess.)

Mr. Hoffmann: I now offer Plaintiff's 41 into evidence. It's been identified shortly before the recess, and it's the letter, Lieblich to Rudo, under date of April 23, 1965.

The Court: Any objection?

Mr. Seeley: No objection.

The Court: So ordered.

(Exhibit P-41 received and marked in evidence.)

By Mr. Hoffmann:

Q. Mr. Lieblich, do you owe any money to Brunswick now?
A. No, sir.
Q. Tell me, was that ruling about c.o.d., cash on delivery, ever lifted?
A. No.
Q. You mean you are still on a c.o.d. basis?
A. Yes. Every once in a while a small invoice will slip in, I guess by error, from Brunswick where they—small bill, but basically we're still on a c.o.d. basis, and we still must have monies available at our field operations in order to pay for the receipt of Brunswick parts when we order them for our automatic pinsetters.
Q. Do you know of anybody else in the same position?

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A. No, I don't.

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[650]

Mr. Hoffmann: Will you be good enough to mark as plaintiff's Exhibit 44 for identification a document entitled, "Eleven Largest Independent Public Corporations Operating Bowling Centers Compared with Brunswick."

(P-44 marked for identification.)

By Mr. Hoffmann:

Q. I show you what has been marked as Plaintiff's Exhibit 44 for identification and ask if you can tell us what it is, Mr. Lieblich?

A. Yes. This was a chart that was prepared some years ago. The information was taken from the annual reports of Brunswick Corporation and the other public companies in the bowling business, and it shows for a period of four years the net worth of Brunswick, our company, and the ten others, with the gross revenues of Brunswick, and our companies, and the ten others; and the number of centers that Brunswick was then operating, that our company was operating and all the other ten public companies were operating.

Q. The Brunswick entries on P-44 for identification, where do they come from?

A. From Brunswick's annual report for each year.

Q. And the NBO industries, what does that refer to?

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A. NBO Industries is our company, National Bowl-O-Mat Corporation. The name was changed to NBO Industries, now Treadway Companies. But it is our company.

Q. Those entries under that heading, from what was the information taken?

A. From the annual reports of our companies for each of these four years.

Q. Then the ten others, what was the source of the information?

A. From the annual reports of the other publicly held companies in the bowling business, whose annual reports weren't available to us.

Q. I note that the exhibit contains gross revenues as well as net worth. Where was that information derived?

A. From the annual reports of each of the companies.

Q. Both, net worth and gross revenue, from the annual reports?

A. Yes, sir.

Q. Now, sir, the number of centers, the next grouping of data, Brunswick, NBO and then the ten. I take it the ten means the ten others?

A. Right.

Q. The Brunswick, where did that information

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come from?

A. Not from the Brunswick annual report. That information wouldn't have been in the report, but it came from the reports that you subpoenaed from Brunswick, Mr. Hoffmann, and made available to me.

Q. And the number of centers under NBO?

A. We know how many centers we were operating.

Q. And as to the ten others?

A. Almost every annual report of the other companies listed in the reports the number of lanes they had, or else we knew about it, anyhow.

Q. This exhibit goes 1965 through the year 1968. Is there any reason why it doesn't go beyond that?

A. Yes.

Q. What is that, sir?

A. Well, I didn't think it would be a valid comparison because after 1969 many of the companies began—the bowling companies, which at that time were purely bowling—began to diversify, to get out of bowling and to do other things. Our company, for example, began to acquire some motor inns, and then a food division.

Fair Lanes began to go into shopping centers. And they bought a chain of ice cream operations.

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Great Lakes Recreation began to go into the motel business, also. And they had an auto laundry. I think they also went into a nursing home.

It didn't seem to me a fair comparison at 1969 because the bowling companies were doing things other than bowling, they were trying to get away from bowling.

Q. Now, sir, can you tell us, from your memory, who are the 10 bowling centers whose annual reports were examined for the purpose of preparation of this exhibit?

A. Well, I will have to test my memory, because I haven't seen this for some years. Fair Lanes—may I write them down, Mr. Hoffmann?

Q. Yes.

A. (writing) Fair Lanes would be one; Great Lakes Bowling; Bowl America Corporation; American Bowling Enterprises; Major League Lanes; Consolidated Bowling; BCA—Bowling Corporation of America. That's seven. At the moment, I just can't remember the other three. I will try—United Bowling Centers. I am missing two. I will try and think of what they are.

Q. May I suggest to you American Recreation Centers, would that be one?

[654]

A. Yes. Yes, that's in California. Yes.

Q. Did you mention American Bowling Enterprises? I think you did.

A. Yes, I have that one down.

Q. Great Lakes Recreation Bowling Center?

A. I have that down. It may be that the ten others included ours. That could be the missing one. I think that is what the chart really—first, it shows us—yes, I think we would be the tenth.

The Court: What was the name of the one in Baltimore?

The Witness: Fair Lanes.

Q. Do you have any further recollection as to the possible tenth?

A. I think it was ours that was included. That was the purpose, to show all ten. So we do have nine and ours makes the tenth. That would complete the list of ten.

Q. My count may be off. But did you mention General Bowling Corporation?

A. No.

Q. Would that be one of the ten?

A. I don't have that down, so—yes. Yes. It is a public company, and their reports were available to us. Yes, sir; because the top does say the eleven

[655]

largest independent public corporations. So ours was in addition to the ten.

Q. Ten other is what it says?

A. Yes.

Mr. Hoffmann: I offer P-44 into evidence. And I would like to have marked as P-45 a series of handwritten sheets, totalling in all seven pages, and on top bearing the names of the eleven bowling centers just listed by Mr. Lieblich in his testimony.

(P-45 marked for identification.)

The Court: Any objection?

Mr. Seeley: I haven't seen it.

Mr. Hoffmann: We don't have a copy of it.

(Shown to Mr. Seeley by Mr. Hoffmann.)

Q. Mr. Lieblich, I show you what has been marked as plaintiff's Exhibit 45 for identification and ask you if you can tell us what that is?

A. Yes, this is Mr. Davis' handwriting. Mr. Davis is the gentleman sitting in the front row, our director of bowling operations. And these are his work sheets that went into the preparation of this study.

[656]

Q. When you say "this study" you are referring to Plaintiff's Exhibit 44 for identification, is that right?

A. The 11 largest independent public corporations, yes.

Q. And do you know from where that runoff was taken, from what source material?

A. Yes, we had the annual reports in our office of each of these companies.

(Document handed to the Court.)

Mr. Hoffmann: Your Honor, in support of my offer of 44 and 45 into evidence I would like to point out simply that perhaps it would have been better if I had marked them as a single exhibit together, but they weren't physically that way in my hand at the time I showed them to the witness. So I have offered them as two separate exhibits.

The Court: Corroborative of the oral testimony adduced from Mr. Lieblich.

Mr. Hoffmann: Yes.

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Mr. Hoffmann: I must continually observe, as a result of Mr. Seeley's repeated remarks, that I have

never in this Complaint, never in anything said in this courtroom, never in my opening statement, made the claim that mere bigness, standing alone, is objectionable under the antitrust laws.

There are some who do make that claim. Economists—there is much literature to that effect. Mr. Justice Burton in his tobacco case said that the mere power, unexercised, to exclude competition, unexercised, is enough for an illegal monopoly.

But this magic phrase, that mere bigness standing alone is not enough comes from the United States Steel Corporation decision of the United States Supreme Court in the 19 teens. And to this we hear this defense asserted—not to the merits of the case, but to the admissibility of a piece of paper which has to do with the combined revenues of 10 other centers, or chains of centers, and our own, as compared with Brunswick.

[666]

Now, sir, I suggest that I would like it clear that once and for all in this case what this bigness argument is. We do not—and I can't repeat this too often. Every time Mr. Seeley rises and says it, if the Court will permit me to, I will rise and contradict it. We do not base this case on the mere size of Brunswick. That is not our claim. It is not in our Complaint. I do not say it now.

But we do base this case, to the extent that it is a monopoly case, on Brunswick's exercise of the power to exclude competition, which I believe has been eloquently shown up to now in the process of putting in our direct case.

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AFTERNOON SESSION.

Mr. Hoffmann: Perhaps before the jury comes in, your Honor, I should state for the record that agreeably with the other side we have put a legend on 44 for identification which would be an asterisk after the name "Brunswick." Perhaps I can show it to you.

(The jury enters the courtroom, and the following proceedings were had within the hearing and presence of the jury:)

Mr. Hoffmann: And then below we have indicated the different totals.

The Court: State that to the jury after they become seated.

Mr. Hoffmann: If your Honor please, we have, with the agreement of counsel for the defendant, put a legend on Plaintiff's 44 so that after Brunswick there is an indication of the total number of centers Brunswick, including a total of the Canadian centers, and that was in 1965.

The Court: Into evidence.

Mr. Hoffmann: I now offer P-44 into evidence.

The Court: Into evidence. 45 also was supposed to go in with that.

[671]

Mr. Hoffmann: 45 was supportive and contains, if your Honor will recall, the handwritten notes from the annual reports.

The Court: Into evidence, 45.

(Exhibit P-45 received and marked in evidence.)

Mr. Seeley: It's just been called to my attention that one of the latter pages of 45 has the same figures. May we have the same legend added to that?

Mr. Hoffmann: The suggestion was made, and it is quite agreeable with me, that similar information be put on the bottom of 45.

The Court: So ordered.

DANIEL PARKE LIEBLICH, resumed the stand and testified further as follows:

DIRECT EXAMINATION (Continued).

By Mr. Hoffmann:

Q. Now, Mr. Lieblich, look, if you will, at Plaintiff's Exhibit 44, including the Canadian centers, in 1965.

Can you make any observation concerning the relationship of the Brunswick net worth to the total net worth of NBO industries and the ten other independent bowling chains which was referred to?

A. Yes.

[672]

Q. What is it, sir?

A. Brunswick's net worth in 1965 was $131,581,000.

The net worth of our company that year was $2,473,000.

The net worth of the ten other bowling chains was $13,448,000.

Mr. Hoffmann: If I may, we are short of copies, I will hold this here near the jury.

Q. Looking at the headings "Gross Revenue for Brunswick in 1965," how much——

A. Brunswick in 1965 had gross revenues of $325 million—pardon me—$325,073,000.

Q. And NBO Industries?

A. In that year we had revenues of $3,276,000.

Q. And the ten others?

A. Ten others had gross revenues of $43,612,000.

Q. Were you present when I gave my opening statement?

A. Yes.

Q. Did you hear me say that the Brunswick revenue exceeded by three times the income of NBO and the ten others?

A. Yes.

Q. Would you look at 1965, the entry for 1965, and tell me if that's so.

A. No, you were wrong.

[673]

Q. In what way?

A. Brunswick's gross revenue is more than seven times that of the combined revenues of our company and the ten other chains in the bowling business.

Q. If I erred, I erred on the conservative side; is that right?

A. Yes.

Q. And then the comparisons are quite similar, are they not, in the years 1965-68, that is to say, the relationships are pretty much the same; is that right?

A. Yes, in each year Brunswick's revenues was about seven times that of all of the other bowling companies.

Q. And so that in 1968 you have a gross revenue of what?

A. Brunswick's gross revenues in 1968 amounted to $434,896,000.

Q. And the gross revenues of all the other bowling chains, sizeable bowling chain proprietors, as reflected by NBO Industries and ten others, totalled what?

A. Ours was $3,261,000, and the other ten were $49,461,000, so it is approximately $52,600,000 being the total revenues of all of the 11 independent public corporations operating bowling centers.

Q. In what way does the net worth figure differ

[674]

from gross revenues—I'm sorry, what is the meaning of "Net Worth"?

A. That's the capital that a company has.

It is made up of both the initial capital plus the accumulation of profits.

Q. And what is the meaning of "Gross Revenues"?

A. Total sales.

Q. Gross revenue is total sales, and net worth is capital; is that right?

A. Their worth, right.

Q. Now, addressing your attention to net worth or capital for 1968, the Brunswick figures of $170 million and some; is that right?

A. Yes, $170,469,000.

Q. And NBO is what?

A. Our net worth that year, $2,746,000.

Q. And the ten other independent proprietor chains?

A. They had $13,172,000 of net worth.

Q. Putting them together they are under $15 million, are they not?

A. Yes.

Q. That is to say, NBO and the ten others?

A. Yes, under $16 million.

Q. And just approximately, and without a

[675]

computer, how do you compare that to $170 million?

A. Less than 10 per cent.

Q. Mr. Lieblich, do you have, without reference to any documents, any approximate figure you could give us for the total lineage that the NBO centers represented in the middle '60's?

To put it another way—let me withdraw that.

Can you tell us what are the total lanes, approximately, that your centers, NBO centers, had?

A. Approximately 400 lanes and pinsetters.

Mr. Seeley: Did I correctly hear 400?

The Witness: Approximately 400.

Mr. Seeley: You both spoke at once, so I didn't get the answer.

The Witness: Approximately 400, Mr. Seeley.

Q. Now, you are operating ten lanes; is that right?

A. Ten centers.

Q. Ten centers, I am sorry.

A. Yes.

Q. And could you average that off then at about 40 lanes per center?

A. Yes, I think the exact number was 396, but approximately 400.

Q. Do you have any picture of the lineage on the

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average, the lineage on the average that was done during the middle 1960's at these centers of yours?

A. Yes.

Q. Could you give us some approximation of that?

A. Yes. In 1961 our lineage per lane, 11,334.

In 1962, it was 10,663.

Q. Without giving it to us for every year, would it be fair to say it was approximately 10,000 lines per lane during the period 1961 through 1970?

A. Well, that's not exactly so.

It was then, a little above that, until 1965, and then it decreased, I would say, from 1965 through 1972, we averaged about 9300 lines per lane.

And for the period 1961 through 1965 we averaged approximately 10,500 lines per lane.

Q. Can you tell us from your memory whether or not the average number of lines per lane which you have just given us represented full capacity use of these centers?

A. Oh, no. A very—well, the best way I can answer that is to say that in the years before 1961 Paramus Bowl-O-Mat, one of the plaintiffs here, and two other bowling companies in which I was involved, did lineage per lane in excess of 15,000 for three years in a row.

So our average of 9500 lines per lane in the years

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1965 through 1972 is a considerable reduction from that which we were able to realize in earlier years.

Q. Assuming capacity bowling, that would be three shifts per day, wouldn't it, or would it be 24 hours a day?

A. Well, yes, we are capable of operating 24 hours a day, and I do recall late in the back '59's and early '60's when we did operate 24 hours a day.

Q. If that were to happen have you any way of telling us how many lines per lane would be bowled?

A. Yes. I recall visiting two bowling centers in 1960 and looked at their books and records for the purpose of seeing if we could buy them, and they were then doing 20,000 lines per lane.

I never saw a bowling center do more than that, but nonetheless, these two centers were doing 20,000 lines per lane. And I know of other people who have had similar experiences.

Q. Then, sir, putting things together, you were doing perhaps 10,000 lines per lane?

A. Yes.

Q. Is it fair to state that from the testimony you have just given that the maximum per lane could have been 20,000?

A. Yes.

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Q. And that 20,000 lines per lane, was that lane equipped with Brunswick automatic pinsetter equipment?

A. It would have been either Brunswick or AMF, you have to have an automatic pinsetter to get that kind of lines.

Q. Is the equipment comparable, AMF and Brunswick?

A. Yes.

Q. Work at about the same rate of speed?

A. Yes.

Q. Would that be the A-1 type of equipment?

A. These were slower ball returns back in those days, slower machines.

Q. Is that what you refer to as the A-1?

A. Yes.

Q. Isn't A-1 the equipment which was generally used in your centers?

A. Yes.

Q. Does it follow from what you have just said that if there were A-2 equipment used, it might result in even more lineage per lane?

A. It could, yes.

Q. How long does it take to bowl a game on, using an A-1 pinsetter, approximately?

A. Well, I guess that depends upon the bowler, depends

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upon how fast he throws the ball, how much he waits to throw a second ball. If there are children sometimes they take long.

It is very hard to give a specific answer on that. I know that our——

Q. Do you in your supervision of your centers have some average, approximate figure that's used to reflect the time taken to bowl a game?

A. Yes. It shouldn't take any more than ten minutes to bowl a game.

Q. Tell us about your centers; are they closed any length of time during the year?

A. No, we shut down so all our employees can observe Christmas, but we are open seven days a week, 364 days a year——

Excuse me, there may be a time during the year when our lanes are resurfaced. When our lanes are resurfaced, there is a very heavy odor that comes from the resurfacing material; and it is also flammable so that the Board of Health in communities often has us close down during that six or seven days when lanes are being resurfaced, but other than that they stay open all of the time.

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Q. Do you have several shifts of employees at your center?

A. Yes.

Q. When you say you are open every day, for how many hours, on the average?

A. Well, if we have a midnight league, then we stay open later. It depends on our traffic. Normally we might close on a Saturday night at 1 o'clock or 2 o'clock. If there are a lot of people still in the center, then our night

man will just stay on later to keep open as long as there is business.

Q. Now, sir, are you equipped to stay open 24 hours a day, if the demand is there?

A. Yes, sir.

Q. Mr. Lieblich, you testified yesterday concerning Exhibit in evidence 27, Mr. Hanigan's remarks at San Juan, Puerto Rico, at the PBAA meeting in 1965, in June. I want to address your attention, please, to one more point in that exhibit. Do you notice this item 1?

A. (Shown to the witness) Yes.

Q. Would you read it, please, aloud.

A. Yes. This is what Mr. Hanigan said at the convention. The first point in the operation of bowling centers is:

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> "1. Where any such bowling establishment is to be operated by Brunswick Corporation, directly or indirectly, through a corporate subsidiary, separate books and records should be kept reflecting in detail the capital investment, income and expenses of each such establishment."

Q. Do you know if that was done?

A. Yes, sir; I do.

Q. Did you have occasion to see such books and records?

A. Yes, I have.

Q. Did you have occasion to work with that in connection with this law suit?

A. Yes, sir.

Q. And what was it that you did?

A. After you subpoenaed the Brunswick records, and received from them the copies of the profit and loss statements of each their BCOD centers, I, with our Accounting Department, analyzed all of their figures and prepared certain spread sheets from their figures.

> Mr. Hoffmann: Miss Costello, will you please mark as 46 for identification a document entitled, Analysis of Profit or Loss of BCOD Centers, running through the years 1965 to 1972.
>
> Your Honor, I am just removing the last

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> two pages from this analysis because they relate to the Canadian bowling centers.
>
> (Exhibit P-46 marked for identification.)

Q. Mr. Lieblich, I show you plaintiff's Exhibit 46 for identification and ask if you can tell us what it is.

A. Yes. This is an analysis of the profit or loss of all of the BCOD centers. We took the records that you had given us, Mr. Hoffmann, from Brunswick Corporation, and on each of these 16 sheets we put down each of the Brunswick Centers, the number that Brunswick had given to them in their records, the name of the center, its location, the number of lanes that it has, and then the profit or loss in each year of their operation from 1965 through 1972.

Q. Was all this data taken from the Brunswick records?

A. Yes, sir.

Q. Go along the first line, please.

A. All right, sir. Yes. The first line is: Center number 102. The name is Interstate Lanes. The location is Ramsey, New Jersey. The number of lanes is 40.

Q. Permit me to interrupt at this point. Would you tell us the source of that information?

[683]

A. From the profit and loss statement of Interstate Lanes at Ramsey.

Q. Now, then, for 1965, the first entry?

A. Yes, in 1965 the operation at Ramsey lost $31,742.

Q. Without going through all of the data on the sheet, is it your testimony that all of this was taken from the Brunswick books and records furnished to you pursuant to subpoena?

A. Yes, sir.

Mr. Hoffmann: If your Honor please, I offer plaintiff's 46 into evidence.

VOIR DIRE EXAMINATION.

By Mr. Seeley:

Q. Mr. Lieblich, are the Brunswick books and records from which you made up plaintiff's Exhibit 46 here in the court?

A. No.

Q. Do you have a sample of them?

A. Yes.

Q. May I see it, please?

Mr. Hoffmann: Could I inquire of you, counsel, as to whether or not Brunswick maintains the profit and loss figures for the various

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centers here in the courtroom?

Mr. Seeley: I think so.

Mr. Hoffmann: Those were the materials which were given to us.

Mr. Seeley: I just want to see if you are using the same ones I am using.

Mr. Hoffmann: All right, sir.

A. Yes, Mr. Seeley. Here is one. It is the one I read, number one or two, Interstate Lanes, Ramsey.

(Handed to counsel by the witness)

Q. Thank you.

A. That is what we received from Brunswick.

Mr. Seeley: Just for future reference, I would like to mark for identification only, the document which the witness has just handed me.

The Court: If you have no objection, I will permit it. Normally, he should do it on his own case.

Mr. Seeley: I am not going to introduce it, I just want to identify it for later reference.

The Court: Let it be marked for identification.

(Exhibit D-1 marked for identification.)

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The Court: What would be a short legend on it, Mr. Seeley?

Mr. Seeley: It is captioned Interstate Lanes, Ramsey, New Jersey, at one corner. Then across the top Profit or Loss Statement, page number one, December 1972.

The Court: Thank you.

(Document returned to the witness.)

Mr. Seeley: Subject to our having an opportunity to check the accuracy of the figures, we do not object.

The Court: Into evidence.

(P-46 received into evidence.)

By Mr. Hoffmann:

Q. Now, Mr. Lieblich, looking at defendant's 1 for identification, can you state, by examining that, whether that is a record from which the first line on 46, having to do with center number 102, Interstate Lanes, was prepared?

A. Yes.

Q. And is that a record coming to you from Brunswick?

A. Yes, sir.

Q. And were there, or are there similar records for all of the entries for the different Brunswick

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centers indicated on plaintiff's Exhibit 46?

A. Yes, sir; every one for every year, 1965 through 1972.

Q. And in respect to that matter, did you hear Mr. Seeley say a moment ago that Brunswick has such records here in court?

Mr. Seeley: I think so, I said.

Mr. Hoffmann: With that modification.

Mr. Seeley: If not, we have some 30 boxes back in the office.

Mr. Hoffmann: No issue has been posed about them by me, sir.

Q. Mr. Lieblich, going down again along the lines of 102, in respect of Interstate Lanes, there is a figure in parenthesis under 1965. That's $31,742, is it not?

A. Yes, sir.

Q. What does that show?

A. Where there is a figure in parenthesis, it means that there was a loss for that year. If there is no parenthesis, it means there was a profit.

Q. And so, you are saying that in '65 that is a loss figure?

A. For Interstate, yes. They lost in 1965 $31,742.

Q. Up on top it says, "BCOD Centers." Again,

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what does BCOD stand for?

A. The Brunswick Corporation operating division. Centers Brunswick took over and is operating.

Q. If you go down the column it shows the number of lanes.

A. Excuse me. Or maybe some new ones that they are now operating directly.

Q. If you go down the number of lanes, you see after the item 107 Plaza, Haverhill, Massachusetts, you see TP, what does that signify?

A. That stands for tenpin lane.

Q. And then right beneath it, also in association with the line for 107, Plaza Lanes, 12 CP; what does that stand for?

A. Candlepins. That means that center has 32 lanes, of which 20 were tenpins and 12 were candlepins.

Q. And if you will look farther down on that line, after 112, Fox Field Lanes, you will see an indication of DP; what does that stand for?

A. Duckpin lanes. That means that Fox Field Lanes, number 112, had 24 lanes in their center, of which 16 were tenpins and 8 were duckpins.

Q. Can you find other examples of DP and CP?

A. Yes, I think I can, sir. Where we have nothing opposite the lane, it means there are only tenpin

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lanes. On page 2, number 129, there is another center having 32 lanes, of which 20 were tenpins and 12 were candlepins.

On page 3, number 205, there are 20 duckpins.

Page 5, Holyoke Lanes up in Massachusetts, a 44 lane center, had 12 candlepins.

On the same page, Northampton Lanes, number 227, Northampton, Massachusetts, again has 10 candlepin out of 32 lanes.

I think that is about the end.

Q. That is all that applies to duckpins and candlepins at BCOD centers?

A. Yes, sir.

Mr. Hoffmann: I ask you, please, to mark as plaintiff's 47 for identification a multi-page document, spread sheet, titled, An Analysis of Profit or Loss of BCOD centers.

(P-47 marked for identification.)

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Q. Mr. Lieblich, you have Plaintiff's 47 for identification in your hands?

A. Yes.

Q. Can you tell us what that is?

A. Yes. This is an analysis of profit or loss of the Brunswick centers compared to their operations in the hands of the independent proprietor.

Q. Now——

The Court: Could I have 47, somebody?

Mr. Hoffmann: I'm sorry, your Honor.

Q. This is called "Analysis of Profit or Loss of BCOD Centers"; is that right?

A. Yes.

Q. That was the same title given to the previous exhibit; is that right?

A. Yes.

Q. 46.

What is different about 47 for identification?

A. In this exhibit there are two lines for each of the Brunswick centers.

The first line is their profit and loss, which is taken from the exhibit just introduced into evidence; and the second line reflects that same center in the hands of the independent proprietor.

Q. Now, coming back to 102, the first entry,

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which is Interstate Lanes in Ramsey, New Jersey, you have a top line, first line, which refers to 40 lanes and the loss in 9/65, 31,742, and runs figures across the line through 1972; is that right?

A. Yes.

Q. Is that the same as the line shown in Plaintiff's Exhibit 46?

A. Yes, it is.

Q. And does it come from the same sources?

A. Yes, it is the same figure.

Q. Now, on the second line, Interstate Lanes again, you have no entry at all from 1965?

A. That's right.

Q. Why is that, sir?

A. Well, 1965 was not a full year of Brunswick operation, and we didn't think there would be any point in having any comparison in that.

In each of the subsequent years they were full year, but 1965 being a start-up year for Brunswick, we couldn't in any way put a comparison of profit or loss in the hands of an independent proprietor.

Q. Now, you do so in 1966, you have your second line devoted to independent proprietors; is that your testimony?

A. Yes.

[691]

Q. And there you have a negative figure of 12,531 beneath the positive figure of Brunswick of 11,392.

Tell us how the figure of 12,531 was arrived at.

A. Yes. The only difference between the Brunswick figure of 11 thousand—the only difference between the Brunswick figure of a profit of 11,392 and the proprietors' loss of 12,531 is a difference in two items.

We have added to Brunswick's figure from their records the cost of depreciation for a proprietor over and above that which Brunswick had to pay on its records, and the only other item we put down was the cost that the proprietor would have for interest on the lanes and pinsetters involved in a similar center.

Q. Now, the depreciation and interest factor are those about which you testified which appear on this enlargement?

A. Yes.

Q. Although the number doesn't show, I hope——

The Court: Do you have a piece of Scotch tape or something to put that corner back?

Mr. Hoffmann: Your Honor, I have taken the liberty of putting down Plaintiff's Exhibit 1. I have that's sufficiently legible to read.

It is not otherwise identified.

[692]

Q. Look again at the 1966 figure—I'm sorry, Interstate Lanes, 11,392 is the Brunswick operation figure, is that right, and that's an affirmative figure?

A. Yes.

Q. Under Interstate Lanes you have a negative figure of 12,531.

You say that that was arrived at by computing interest and depreciation?

A. Interest and depreciation that a proprietor would have beyond the amount of depreciation which Brunswick's books reflected that they had taken for Interstate Lanes in Ramsey.

Q. Can you by reference to Plaintiff's Exhibit 1 point out again how the interest factor was arrived at?

A. Yes. The interest that would be the obligation of a proprietor on an annual basis would be for the first five years, $102 on the bowling lane, and $218 on the pinsetter.

So the proprietor would have an interest charge of $320 per year on the lane and pinsetter if he was paying off Brunswick.

Q. Is this the figure to which you refer?

A. Yes, and that's at 6 per cent interest.

Q. Computing as you explained in connection with Exhibit 1?

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A. Yes.

Q. Was there anything else that you wanted to say about the 12,531?

A. Yes. Brunswick did not charge any interest in its profit and loss statements for the equipment, and knowing that the proprietor would have the interest charge, we increased the expense for the proprietor by that amount.

The other amount that we included was depreciation, as that exhibit reflects, the independent proprietor would have a charge of $1,000 per lane per year for depreciation.

Now, Brunswick did show on its books some depreciation, so we subtracted from the $1,000—let's take a 40-lane center—we subtracted from $40,000 the exact amount that Brunswick reflected here they did take, and the difference we included as an expense that the independent proprietor would have.

And adding from Brunswick's end result the additional interest and the additional depreciation, we come to the second line of the exhibit, which shows how the independent proprietor would have made out running that center during the year in question.

Q. Now, sir, there are Brunswick-operated centers running with—with information supplied by Brunswick

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running throughout this exhibit, are there not?

A. Yes, they are all of the Brunswick figures on all 17 pages.

Q. In every case on those seventeen pages would the first line relating to the name of the center and its location and number of lanes and so forth show what Brunswick itself has indicated as its profit or loss?

A. Yes.

Q. And—then the second line, is that a line that you uniformly use for the independent proprietor?

A. Yes, sir.

Q. And it makes—it applies a calculation found in Plaintiff's 1; is that right?

A. Yes.

Q. In order to come out with a different figure from that given by Brunswick; is that a correct description of what has happened here?

A. Yes.

The Court: Just to clarify it for the Court, so that in 1966, using your figures, Mr. Leiblich, used by you as far as Brunswick is concerned, an individual proprietor would have lost $12,531 if he had to carry depreciation, interest, and what else?

[695]

The Witness: That's all.

The Court: Just those two?

The Witness: Right, that's the only changes between Brunswick's figures and——

The Court: And 1967, line 2, the figures that the average individual proprietor——

The Witness: Your Honor, in 1967 the Brunswick Corporation showed a profit of 34,581, the independent proprietor would have made 10,530——

The Court: All right.

Mr. Hoffmann: May I have marked, please, Plaintiff's 48 for identification a document entitled—spread sheet entitled "Analysis of cash flow."

(Exhibit P-48 marked for identification.)

Mr. Hoffmann: Containing a number of pages bound together, reflecting the years 1965 through 1972.

The Court: I notice on top of the exhibit it doesn't say BCOD. Is it BCOD?

Mr. Hoffmann: Indeed, sir, it is an analysis of cash flow for BCOD centers, and perhaps I can physically mark it in longhand.

The Court: Please.

Mr. Hoffmann: Perhaps you will do that for

[696]

yourself, Mr. Seeley?

Mr. Seeley: I have done it, sir.

The Court: I have one.

Mr. Hoffmann: Thank you, your Honor.

By Mr. Hoffmann:

Q. Mr. Lieblich, I show you Plaintiff's 48 for identification, entitled "Analysis of cash flow for BCOD centers."

Tell us what that is, please?

A. Yes. This exhibit, which is entitled "Analysis of cash flow for BCOD centers," is intended to show the cash that was available in each of the centers in Brunswick's hands during the years of their operation, and a second figure appears which is the amount of cash that an independent proprietor would have needed to make his payments to Brunswick on his equipment debt to Brunswick for the lanes and the pinsetters.

Q. Well, come out of the first entry again. That's 102 Interstate Lanes, Ramsey, New Jersey, just as you have had it on top of the other document.

What is the source of the information there in the first line?

A. The profit and loss statement of Brunswick's Interstate Lanes at Ramsey.

Q. Is that the same as to be found on Plaintiff's

[697]

46 and Plaintiff's 47?

A. The difference between 46 and the first line in this figure is that we added to the Brunswick profit, net income,

what their books showed for depreciation, because cash flow is a result of adding together net income plus depreciation, which we call a non-cash item.

That's the only difference between the net income figures in the first exhibit and the cash flow figure in this exhibit.

[698]

Q. And would you explain briefly, please, what is meant by "depreciation"?

A. Well, I will go back to the illustration of the adding machine, which cost $150 and it is good for 10 years.

You set aside by bookkeeping $15 each year as depreciation, as to the life of the adding machine, so that theoretically at the end of the 10 years you have saved $150 so that you may buy a new adding machine.

Q. I notice that in 1965 when you applied depreciation, you come out with a figure which is a smaller loss than the Brunswick figure; is that right?

A. I don't understand——

Q. Well, if you will look——

If you will be good enough to look at plaintiff's 46 in evidence——

A. Excuse me, sir.

Q. Which is the analysis of profit and loss.

A. Yes.

Q. I have it here.

You notice the 1965 figure?

A. Yes.

Q. Is the negative parenthesis figure of $31,742?

[699]

A. Yes.

Q. And in your analysis of cash flow for BCOD centers for 1965, what is the figure?

A. 14968.

Q. That's a lesser one?

A. Yes.

Q. Is that because you accommodated depreciation as you described it?

A. Yes.

Q. Now, then, is it true of all of the entries under the different years, 1965-1972, that you have applied depreciation in the way you have just described?

A. Yes, sir.

Q. And is it that which accounts for the differences between the first line under 102 and the first line which is to be found on plaintiff's 46?

A. Yes.

Q. And would the same be true for the various first lines throughout the exhibit entitled, "Analysis of Cash Flow for BCOD Centers"?

A. That's right.

Q. Now, sir, please look at that analysis as to the second line, which is just below the first.

What does that reflect?

A. That is intended to show the cash that the in-

[700]

dependent proprietor would need to pay Brunswick for the lanes and the pinsetters.

Q. How is that arrived at?

A. It comes from——

Q. Would you care to come forward and show us?

A. If you want to, but I can do it from here.

Exhibit 1 shows that the bottom cash need.

It shows that for the pinsetter, dividing the eight years of the contract into the total cost of $9,348 there would be an annual cost of $1,168 for the pinsetter.

The lane, which was a five year contract, total contract of five years with interest, $4,113, means the proprietor would have to pay $823 per year for five years for that.

Adding together the $1168 and the $823, the total cash need of the proprietor to make his payments during the year would be $1,991, and we round that out to $2,000 to illustrate it a little more clearly.

Q. And that $2,000 is per lane, is it not?

A. Yes.

Q. And then what did you do in your second line of calculations under the 102?

A. Just multiplied $2,000 by the number of lanes involved, so that Interstate Lanes was 40 lanes, 40

[701]

times 2,000 is $80,000.

That's the cash that an independent proprietor would need to pay his equipment obligations to Brunswick.

Q. Now, was that calculation made in the same way for all of the different BCOD centers which are listed on plaintiff's 47—48 for identification?

A. Yes, with one additional qualification.

Q. What is that?

A. In 1971 and 1972 the figure for the independent proprietors drops now from $80,000 to 47,080.

The reason for that is since the lanes were theoretically paid for on a five-year basis, the proprietor wouldn't need cash in those last two years for his lanes. He'd have to continue the payments on the pinsetters but he wouldn't have to pay off on the lanes.

Theoretically, they would have been paid for after these five full years.

Q. Could you come at that more slowly, please?

A. Yes.
Q. The lane contract was how many years?
A. Five years, financed over five years.
Q. Is that what is indicated over here on the exhibit 1?
A. Yes, it is.

[702]

Q. And how long is the pinsetter contract?
A. Exhibit 1 reflects, pinsetter, the pinsetter was financed over a period of eight years.
Q. And that's indicated here; is that right?
A. Yes, it is.
Q. And in getting the need for the—the cash need for the independent proprietor you divided, did you not, the contract length of time, that is, eight years in the case of the pinsetter and five years in the case of the lane, into the total unpaid balance and interest; is that right?
A. Yes.
Q. So is it then your testimony as to 1971 and 1972 that you accommodated the circumstance that the eight years for the pinsetters and five years per lane have expired?
A. Yes, we took that into consideration in preparing the comparison.

Mr. Hoffmann: I now offer 47, plaintiff's 47, which is the analysis of profit and loss for BCOD centers, and 48, which is the analysis of cash flow for BCOD centers.

The Court: Any objection?

Mr. Seeley: One question, first.

The Court: Yes.

[703]

CROSS-EXAMINATION ON VOIR DIRE.

By Mr. Seeley:

Q. Mr. Lieblich, in accounting practice, as you understand it, in the calculation of the cash flow of a business, are contributions to capital subtracted from annual income?
A. No, I don't believe so.
Q. Is it not true that on plaintiff's 48, entitled, "Analysis of Cash Flow," on the second line in each case a contribution to capital, that is part of the cost of the pinsetters, has been counted as a depreciation from cash flow or as a part of cash flow?
A. I don't understand your question.
Q. All right. On Plaintiff's 48, that is headed, "Analysis of Cash Flow," is it not?

The Court: Do you have it in front of you, Mr. Lieblich? P-48.

Mr. Hoffmann: It is entitled, if I may just point it out, Mr. Seeley, "Analysis of Cash Flow for BCOD Centers."

Mr. Seeley: Does that mean it is something else for others?

The Witness: I have this one. That's 48?

Q. Then I have another question.
The second line opposite the name of each bowling center is that supposed to be an analysis of

[704]

cash flow for hypothetical, independent operators?
A. No.

Mr. Seeley: Your Honor—which ones did you offer?

The Court: 47 and 48.

Mr. Hoffmann: Yes.

The Court: Analysis of cash flow and the other one.

Mr. Seeley: The defendant objects to the three exhibits, your Honor—

The Court: Two. 47 and 48.

Mr. Hoffmann: 46 is in evidence, your Honor.

The Court: I say 47 and 48, the only two that are not in evidence.

Mr. Seeley: 47 and 48.

The Court: Yes.

Mr. Seeley: On the ground that the independent exhibitors whose figures purport to appear thereon are entirely mythical persons, that it has not been shown by the evidence that they correspond to any identifiable, real, independent exhibitors or to any average real independent exhibitors;

On the further ground that it appears from

[705]

the way these exhibits were made up that they refer to a mythical independent exhibitor who purchased his equipment new from Brunswick in 1965.

There is no evidence that there were any such exhibitors or indeed, that there was any market of any consequence for new Brunswick equipment in 1965.

And on the further ground that the analysis made here purports to include in the independent exhibitors income and in his cash flow comparison his needs for cash to pay off indebtedness to Brunswick and interest on such indebtedness.

It has been admitted that Brunswick Corporation has cash needs for those purposes, although the amount has not been shown, and I object that that is not cured by labeling these BCO, because the plaintiffs in this case and others who were actually proprietors are not competing with BCO as if it was floating in space, they are competing with Brunswick Corporation, one of whose arms or hands is BCO.

I, therefore, submit that the comparison is misleading.

The Court: Mr. Hoffmann.

Mr. Hoffmann: If your Honor please, we have

[706]

extensive discussion of this assumed proprietor, hypothetical proprietor, in connection with the admissibility of plaintiff's 1.

Your Honor received that exhibit, and this is simply a mathematical or arithmetical computation of the concepts underlying interest and depreciation and cash need which are found on plaintiff's 1.

What we have done is simply to take this principal, which plaintiff's Exhibit 1 embodies and applied it to the known figures of Brunswick, which were furnished us in response to subpoena.

So the objection cannot be in relation to Brunswick's figures, the first line for each one of these BCOD operated center.

Now, knowing what the figures are for those, we, because we accepted what Brunswick has told us and used those figures, we now ask ourselves the question, what would happen if BCOD were not operating the center, because an independent proprietor was.

And there is no mystery about this. Our answer to the question is, what would happen would be that the individual proprietor would have to pay out interest, as is indicated on Exhibit 1,

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and in that average amount, and he would also have to have depreciation in the amount which is shown by Exhibit 1.

So we have taken Exhibit 1 in effect and applied it to the information furnished us by Brunswick as to each of its own centers.

Now, the reason for it, I don't think needs to be discussed because Mr. Seeley has not based his objection on relevancy as to the issues in the case. If I understood him correctly, his objection is based upon the fact that this is a hypothesis, and that hypothesis, I submit, has already been ruled upon by your Honor in connection with the admissibility of Exhibit 1, and so I urge the admission of these documents.

[708]

The Court: Anything else, Mr. Seeley?

Mr. Seeley: No, sir.

The Court: I agree with Mr. Hoffmann. Into evidence, over the objection of the defendant, P-47 and P-48.

(Exhibits P-47 and P-48 received and marked in evidence.)

Mr. Hoffmann: Miss Costello, would you be good enough to mark as P-49 for identification a one-page document entitled BCOD consolidated summaries compared to operations in hands of individual proprietors, and bearing the legend "Domestic operations only."

(Exhibit P-49 marked for identification.)

By Mr. Hoffmann:

Q. Mr. Lieblich, you have in your hands Plaintiff's Exhibit 49 for identification?

A. Yes.

Q. Can you tell us what it is?

A. Yes, sir. This is a comparison of the Brunswick-operated centers on a consolidated basis rather than on an individual basis, that it was in the last exhibit, but on the overall, compared to on the overall in the hands of individual proprietors.

Q. What is the basis for the data displayed on

[709]

this exhibit for identification?

A. The Brunswick figures, implemented only by the factors in Exhibit 1, showing the interest that a proprietor would have, and the depreciation that a proprietor needs, less than what Brunswick itself had taken.

Q. Is this a consolidation of the information found in Plaintiff's Exhibit 47, which is the analysis of the profit and loss of BCOD centers?

A. Well, it really came from the—not from that, sir. It came from the specific document of Brunswick on consolidated profit and loss.

Q. Those documents being the ones similar to Defendant's Exhibit 1 for identification?

A. Yes, but on a consolidated basis. Instead of having—they have one overall summary, with the same income and expenses on all their operations. That is what we call the consolidated summary.

Q. Then the information comes from Brunswick, is that right?

A. Yes, sir.

Q. With, again, what calculations of your own, what did you provide for this exhibit for identification which Brunswick did not provide?

A. The only calculations that we added to this was

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interest at $320 per lane, as we have on Exhibit 1, plus depreciation on the basis of $1,000 per lane, less the depreciation which Brunswick itself reflected in its consolidated summaries.

Q. The Brunswick depreciation is Brunswick's own figure, not something you computed?

A. That's right, sir.

Mr. Hoffmann: I offer, your Honor, Plaintiff's Exhibit 49 into evidence.

The Court: The same objection?

Mr. Seeley: The same objection.

The Court: Into evidence, 49.

(Exhibit P-49 received and marked in evidence.)

The Witness: Mr. Hoffmann, I noticed one typographical omission, if I may, sir. In 1966, in the line for individual Brunswick net, the figure is $1,136,000 loss. That "1" was left out.

Mr. Hoffmann: May we correct that? It seems apparent.

The Court: So ordered.

Mr. Hoffmann: Lady and gentlemen of the jury, on the line for individual Brunswick net, under the year 1966, one number has been inadvertently left out. It should read $1,136,000 rather than $1,036,000.

[711]

By Mr. Hoffmann:

Q. Now, Mr. Lieblich, would you please look at the first line, number of centers, on Plaintiff's Exhibit 49, and tell us what does that mean?

A. That is the number of centers that Brunswick was operating at the end of each of these years, 1965 through 1972, as reflected in their consolidated summary.

Q. And when you say at the end of the year, you mean at the end of the calendar year, that is to say, December 31?

A. Yes. The report was December of each year. And this figure of 124 for 1965 and 167 for 1970 was the number reflected in Brunswick's consolidated summary for that year.

Q. It doesn't necessarily mean, does it, that during the whole year 1965 there were 124 centers in the hands of BCOD?

A. It probably does mean that, yes. Excluding the Canadian ones, yes.

Q. Well, sir, the information you have is as of the end of the fiscal year, is it not?

A. It is whatever Brunswick reported that we had then.

Q. But is the figure given for the end of the fiscal year necessarily the figure which Brunswick might be operating, that is, the number of centers Brunswick

[712]

might be operating during the entire fiscal year?

A. I can't speculate. That 124 is the figure we took from Brunswick's records.

Q. The answer is, then, that you don't know whether that reflects the entire year '65 or not, is that right?

A. That's right. That's the number they had down as being operated at that time.

Q. As of that particular date, December 31, 1965?

A. Yes, sir.

[713]

Q. Is the same true throughout the years '65 through '72?

A. Yes, whatever was the Brunswick record, we put down in this chart.

Q. Then the number of lanes in the next line, where did you find those?

A. Right from the Brunswick summary itself.

Q. And in '72, those are 5200, is that right?

A. Yes.

Q. As against what for 1965?

A. 3,629.

Q. Is it fair to say, if you look across the page at numbers of lanes, that they increase each year, with one exception, that being 1969?

A. That is correct.

Q. Would you look at the number of ten pin lanes, please?

A. Yes.

Q. Again, with the exception of 1969, there is a steady increase, is there not—or an increase? I'm sorry.

A. Yes, there is, sir.

Q. And it goes from what in '65?

A. From 3,519 ten pin lanes in 1965 to 5,110 in 1972.

Q. The next line is profit and loss, a loss in

[714]

parentheses, is that right?

A. Yes. Where there is a parenthesis it means there was a loss. If there is no parenthesis, it means there was a profit during that year.

Q. And the source for that information?

A. Brunswick's consolidated summary sheets.

Q. And during each of the years 1965, 1966, 1967, 1968, am I correct in saying that the Brunswick-operated centers resulted in a loss, according to Brunswick's own figures, is that right?

A. Yes, sir.

Q. That situation changes in 1969, does it not?

A. Yes. A profit of $357,000 was reflected in 1969.

Q. And by '72 it had reached what?

A. In 1972 they made a profit of $6,296,000.

Q. Starting in 1965 there is a loss figure, is that right?

A. Yes, they lost in 1965 $2,171,000.

Q. The next part of the exhibit, the heading is "For individuals," and then "Brunswick net.". That Brunswick net line, is that not the same as the line just above, profit and loss?

A. It is identical to the line above. It's Brunswick's profit or loss for that year.

Q. Then in the next entry beneath that, there is

[715]

interest at $320 per lane, for ten pin lanes only.

A. Yes.

Q. From what is that derived?

A. From Exhibit 1. We multiplied the interest from Exhibit 1 of $320 per lane times the number of ten pin lanes that Brunswick was operating during the year in question.

Q. This is the figure, $320, that you are referring to? (Indicating.)

A. Yes, Mr. Hoffmann.

Q. And then the next entry is depreciation?

A. Yes.

Q. How was that computed?

A. From Exhibit 1 we have depreciation—the middle, Mr. Hoffmann—we have depreciation of $1,000 per lane based on our original cost of $15,000 for all the equipment. We then multiplied $1,000 per lane, times the number of ten pin lanes that Brunswick was operating during the year in question.

Q. Now, having done all that, you have a total, do you not, for interest and for depreciation for ten pin lanes?

A. Yes.

Q. And is that totalling designed to reflect what the situation would have been for an individual

[716]

proprietor rather than Brunswick-operated division?

A. Right, sir.

Q. And those figures were derived at by the method just used, is that right?

A. Yes.

Q. Just described. I'm sorry.

A. Yes, sir.

Q. Casting your eye along the line for interest, they all come out with a negative total, do they not, or a loss total?

A. Yes.

Q. What does that mean, sir; what is this all designed to show, this line of interest at $320 per lane?

A. Well, it means that Brunswick didn't put down an interest charge. And the individual proprietors would have had an interest cost. So the purpose of this total is to show what interest would have cost the independent proprietors who were operating this number of centers during the year in question.

Q. And looking again—you have a total of $9,953,000 for interest?

A. Yes, that would have been the total of interest payments due from proprietors over the period of eight years.

[717]

Q. And that number exceeds, does it not, the Brunswick net reflected in the line just above?

A. Yes, that's true.

Q. That was $8,577,000?

A. Yes, sir.

Q. Now, going down to the next line, depreciation, at a thousand dollars per lane, tenpin lanes only; again, was that line created the same way, by applying the depreciation figures as found on plaintiff's 1?

A. Yes, sir.

Q. And when you get through with that, what do you have as a grand total?

A. The total, $34,352,000.

Q. Now, you have a final line in which you say, "less Brunswick depreciation."

A. Yes.

Q. Will you explain the meaning of that?

A. Yes. Brunswick did reflect on its consolidated summary depreciation of $16,415,000 over this period. And since the proprietors would have had depreciation of $34,352,000, subtracting $16,415,000 from $34,352,000 means that the independent proprietors would have had additional $18,000,000 of depreciation expense on their books which Brunswick did not reflect on its books.

[718]

Q. I know you have just done this arithmetic yourself, but if you look at the total column on the right, there is a bottom line figure of $19,313,000.

A. Yes.

Q. Is that more accurate than the eighteen million you just used?

A. No, sir.

Q. Or is that something different?

A. The eighteen million was reasonably correct for that depreciation. The total of $19,313,000 means that during these eight years proprietors would have reflected a loss of $19,313,000 in operating these various centers.

Q. That is, if they had these charges referred to on the exhibit, that is, interest and depreciation.

A. Yes, sir.

Q. Found in plaintiff's 1, is that your testimony?

A. That is correct.

Mr. Hoffmann: Would you mark as plaintiff's Exhibit 50 for identification a one-page spread sheet entitled BCOD Consolidated Summaries, Brunswick Cash Flow Compared to Cash Needs of Individual Proprietors, Domestic Operations Only.

[719]

(Exhibit P-50 marked for identification.)

Q. Mr. Lieblich, I show you plaintiff's Exhibit 50 for identification and asked you if you can tell us what it is?

A. Yes, this is a comparison from the Brunswick consolidated summaries of the cash that they reflected from the operations of these centers compared to the cash needs of individual proprietors who have been called upon to make their payments to Brunswick for the lanes and the pinsetters.

Q. Looking at it more closely, Mr. Lieblich, again the entries—the period of time is 1965 through '72, is that right?

A. Yes, sir.

Q. And you have the numbers of centers listed. Are those the same numbers found in the first line of the previous three exhibits?

A. Yes, sir; they are the same numbers.

Q. And then the number of lanes, are those number of lanes, lanes of Brunswick operated centers?

A. They are the same numbers, sir.

Q. And in every instance derived from Brunswick figures supplied to us, is that your testimony?

A. Yes, sir.

Q. And then tenpin lanes, number of tenpin

[720]

lanes, how is that number arrived at?

A. That is the same figure as we had in the prior exhibit.

Q. Did you take, in order to get that, the total number of lanes and subtract the candlepin and duckpin lanes, as indicated?

A. That is correct.

Q. Now, then, there is a profit and loss line, again running across from '65 through '72. What is the origin of that?

A. Brunswick's consolidated summary figures.

Q. And the depreciation, the origin of that line?

A. Brunswick's consolidated summary figures.

Q. And cash flow?

A. The addition of the two items.

Q. When you say the two items, what items are you referring to?

A. Profit, loss and depreciation. The only year where they don't balance, we took it from Brunswick's figures—for some reason in 1965 their two figures didn't balance. So we put in here exactly what we found in the Brunswick figures.

Q. Then, when you get to the next one, you have individual needs, $2,000 per lane, tenpin lanes

[721]

only.

A. Yes.

Q. Does that represent your calculation?

A. Yes, that is our calculation from Exhibit 1. Exhibit 1, on the bottom, in which we have cash needs for the individual proprietors of $2,000 per lane per year, to make his or their equipment payments to Brunswick. All that we did on this chart was to multiply that $2,000 by the number of tenpin lanes that Brunswick was operating that year.

As an example, in 1966, they had 4,411 tenpin lanes. If you multiply that by 2,000 per lane, you have our figure of $8,822,000.

[722]

Q. And then you finally have an excess or deficiency line. What is that?

A. Well, if the number is in parenthesis it—means the individual proprietors would have needed that much more amount to make their equipment payments to Brunswick. Or, to put it differently, the proprietor in 1965 would have been short $2,681,000 to make his payments to Brunswick.

In 1966 they would have been short $7,836,000.

Q. Finally, there is a footnote 1, which applies to the years 1971 and 1972, which I noted on the line where the phrase, "Individual needs, $2,000 per lane," is found.

A. Yes.

Q. Would you explain that footnote?

A. Yes, sir. Exhibit 1 reflects the fact that the lanes are paid for in five years and the pinsetters in eight years. Consequently, during 1971 and 1972, we had reduced the obligation of the individual proprietors, since we assume in the five years the lanes have been paid for in full. Consequently, $2,000 per lane from the first five years has been reduced for the next two years to $1,177 per lane, reflecting only the amount due on the pinsetters.

Mr. Hoffmann: I offer plaintiff's Exhibit

[723]

50 into evidence, your Honor.

The Court: Objection?

Mr. Seeley: The same objection that I made before, your Honor. And I would like to observe what the effect here is, the fact that the caption shows Brunswick's cash flow compared to cash needs of individual proprietors, two different things.

As I studied this, it seems to me that what the individual proprietors have done during this period, 1965 to 1972, is pay off practically the entire cost of brand new Brunswick pinsetters and lanes, the cost of which for 5,000 lanes I figure is something like $75,000,000.

I object to its admission.

Mr. Hoffmann: Your Honor, it is another application of what——

The Court: Also longevity, too, I would think.

Mr. Seeley: Sir?

The Court: Also longevity, too, as far as the age of the lanes——

Mr. Seeley: Brand new——

The Court: Giving them a life time—let me call it that—of eight years and five

[724]

years, respectively.

Mr. Hoffmann: Your Honor, the footnote makes allowance for the number of years that have elapsed.

The Court: I know. Not the number of years that have elapsed. After the fifth year they have given them—they have stopped payment on what, Mr. Lieblich?

The Witness: On the lanes, sir.

The Court: On the lanes, right.

Into evidence.

Cross-examination, I think, has to do with the weight of this exhibit.

P-50 into evidence, over the objection of Mr. Seeley. He will have his opportunity on cross-examination to interrogate this witness.

(Exhibit P-50 received in evidence.)

Mr. Hoffmann: Just a few more questions about the exhibit itself. Is it all right for me to circulate this, your Honor?

The Court: Yes.

(Handed to the jurors.)

By Mr. Hoffmann:

Q. Now, Mr. Lieblich, would you take us down the line for 1965 quickly and tell us, first, what is

[725]

the object, what is it that this exhibit is doing?

The Court: Referring to?

Mr. Hoffmann: Referring to plaintiff's Exhibit 50 in evidence.

A. To show the great advantage that Brunswick has over the independent proprietors in the operation of these centers. Brunswick doesn't have to pay any money to itself for its equipment and the independent proprietors would have to pay $2,000 each year to Brunswick for the equipment obligation.

Q. Now, as you go down 1965, you find a cash flow figure for Brunswick, is that right?

A. Yes.

Q. And that is in parenthesis, is it not?

A. Yes.

Q. That parenthesis means what?

A. A loss. There was a cash deficit during Brunswick's first start-up year, 1965, of $2,681,000.

Q. Was 1965 any special year in the history of Brunswick's bowling operations, do you know?

A. Yes, that's when they first began their BCOD Division.

The Court: Let me interrupt a minute, Mr. Hoffmann, while it is on my mind.

Mr. Lieblich, you say that Brunswick, of

[726]

course, didn't pay themselves. What about the capital outlay of Brunswick when they made all of this equipment? They had to pay workers, they had to pay insurance, and everything else, did they not; build buildings, build machines, pay for patents, et cetera, whatever they do. Is that considered in this?

The Witness: Certainly, Brunswick did have some cost, sir. No question about that. The amount that the proprietors often paid as down payments, in some cases, equaled almost the entire cost that Brunswick had for the pinsetters. So there would have been some remaining cost, yes.

I am trying to answer, as best I can. As an example, sir——

Mr. Hoffmann: Excuse me. I didn't mean to cut your answer off.

The Court: Well, that answers it. I wanted to ask it while I was thinking of it.

Yes, Mr. Hoffmann.

By Mr. Hoffmann:

Q. Further along the line that the Judge's question suggests, do you see the line for profit and loss under 1965 of $2,171,000?

[727]

A. Yes.

Q. Where does that figure come from?

A. From Brunswick's consolidated summary sheets.

Q. And does Brunswick's consolidated summary sheet show that as a loss?

A. Yes.

Q. So that the loss figure of $2,171,000 is not something that you figured out for yourself, but something that Brunswick figured out, is that right?

A. It is their figure, sir, not our figure.

Q. So whatever basis of accounting they might have for loss, this is what they called their own loss, isn't that so?

A. Their figures, sir.

Q. Now, when you come down to the bottom, you don't, I notice, in '65, have any comparison between the individual proprietors' needs for that year and the Brunswick cash flow. Would you explain that to us again, please.

A. Yes, sir; it was the start-up year for Brunswick. It wasn't a full year. So we didn't seek to make any comparison.

Q. But in 1966, you did that?

A. Yes.

Q. And you have in 1966, near the bottom, an

[728]

entry of Brunswick's cash flow of $986,000, is that correct?

A. Yes.

Q. Does that mean that cash flowing into Brunswick exceeded its operating needs by that amount?

A. That means, sir, that after taking all the money and paying all their bills Brunswick had a cash surplus in their BCO of $986,000.

[729]

Q. Now, you have a figure of eight million, eight hundred twenty-two and three zeroes, $8,822,000, as individual needs per ten pin lane in 1966.

What is that?

A. That's the total amount that the individual proprietors would have needed to pay Brunswick equipment obligations based on $2,000 per lane.

Q. And that $2,000, of course, is that which you have on Plaintiff's Exhibit 1?

A. Yes.

Q. Then on the bottom of '66 you have a figure in parentheses of $7,836,000.

Is that a deficiency, is that what the parentheses mean?

A. It means that proprietors in 1966 in operating these centers would have been short $7,836,000 to pay their debts to Brunswick for the lanes and pinsetters.

Q. And running along that line, sir, what does the next deficiency figure of $8,417,000 for 1967 reflect?

A. In 1967 the proprietors would have been short $8,417,000 to make their payments to Brunswick on the lanes and pinsetters.

Q. In the same way the next figure would be for 1969, it would be $6,846,000, for 1970 $5,639,000 short; is that what you are saying here?

[730]

A. Yes.

Q. In 1971, I notice that this bottom line figure for the first time becomes positive; is that right?

A. Yes.

Q. Do you have any explanation for that?

A. Yes.

Q. What is it?

A. Our chart reflects that the lanes had been paid for in the first five years; consequently, the proprietors' debt needs would have dropped after that.

Q. Now, sir, in 1972 you show a $2,024,000 excess, to use the word on the last line, excess or deficiency.

This is excess, is it not?

A. Yes.

Q. And do you have a reason for that?

A. Yes. The Brunswick operations made a lot more money in 1972 than they did in 1971, by almost a million and a half dollars.

Q. And does this "a lot more money" you referred to reflect some change in bowling center operations?

A. Well, during the last few years the country has witnessed a rather dramatic turnaround in the bowling industry, after the serious decline through 1969, beginning in 1970 we began to see an upturn, and every year since

[731]

then the upturn has been increasing.

Q. Do you have any opinion, Mr. Lieblich, as to why this upturn has taken place?

A. Yes.

Q. What is that opinion?

A. Well, several reasons account for it.

I think the primary reason is, there has been an increase in the population of our country, particularly of an age which we consider are our bowling age.

Now, at the same time—not just our company, but the entire industry, including AMF, including Brunswick, worked together to try to create more interest in bowling in general.

During the years we have participated in school programs, teaching youngsters in school to bowl.

Those youngsters are now six or eight years older than when we began teaching them. They are now coming into our centers to bowl and to pay for it.

We continued our efforts with ladies. In many of our centers we are rather full now in the morning with daytime leagues of ladies.

All these factors together—another factor, there has been—there have been a few centers have gone out of business in the last six or eight years, and as they have been abandoned or shut down there is a little less

[732]

competition.

So we are all seeing now better results in bowling than we saw in the terrible days of the '60's.

• • •

[737]

Q. Mr. Lieblich, addressing yourself to Pueblo—

The Court: I didn't hear you, Mr. Hoffmann.

Mr. Hoffmann: I asked the witness to address himself to Pueblo, the situation in Pueblo, Colorado.

Q. You opened in what year?
A. In August or September of 1960.

Q. And did there come a time when there was a dispute with Brunswick concerning the Pueblo operation soon thereafter?

A. Yes.

Q. When was that?

A. It culminated—came to a head in February, February of 1962.

Q. What was the dispute about, sir?

A. Their misrepresentation in the inducement of the original contract for the sale of equipment in having us make our investment in Pueblo in 1960.

Q. And was that dispute with Brunswick settled between the parties?

A. Yes, it was.

[738]

Q. What was the settlement, what form did it take?

A. They gave us credit of somewhere approximating $50,000, mainly a waiver of interest charges, they cancelled some other unpaid obligations, and then rewrote the Pueblo contract for over another period of time.

Mr. Hoffmann: Miss Costello, would you kindly mark as Plaintiff's Exhibit 51 for identification a document entitled General Release, three pages long, and citing that it was made on the 30th day of July 1963.

(Exhibit P-51 marked for identification.)

Q. Mr. Lieblich, I show you P-51 for identification. Is that the document to which you referred in your testimony just now?

A. Yes, this is the release that was executed by me as president of Pueblo Bowl-O-Mat after the matter was settled with Brunswick in July of 1963.

Q. Are you making any claim in this present lawsuit with respect to the subject matter of that dispute which was settled by the release?

A. No, sir.

Q. You are not claiming any money for that subject?

A. No, sir.

[739]

Mr. Hoffmann: I offer P51 into evidence.

Mr. Seeley: No objection.

The Court: Into evidence, 51.

(Exhibit P-51 received and marked in evidence.)

Q. Now, Mr. Lieblich, coming—

Mr. Seeley: Are you going to another subject now?

Mr. Hoffmann: No, sir; I am at Pueblo. I propose to stay with Pueblo for a while.

Mr. Seeley: The episode which terminated in the release, are you finished with that?

Mr. Hoffmann: Yes, I think it will be apparent by my next question.

Mr. Seeley: I would like to go to the side bar when you are quite finished.

The Court: All right.

(Whereupon the following proceedings were had at side bar, outside the hearing of the jury:)

The Court: Yes, Mr. Seeley.

Mr. Seeley: The defendant now moves to strike the testimony previously received as to the allegedly

misleading market survey furnished by Brunswick to the plaintiff, Pueblo Bowl-O-Mat, in 1960, on the ground that it now fairly appears that that was the subject matter of a former dispute

[740]

completely settled among the parties and has no relevant place in the record of this case.

Mr. Hoffmann: Your Honor, there is not a single word in the release which imposes any silence on Mr. Lieblich. The dispute was over money, with damages resulting from the so-called misrepresentations. That dispute certainly was settled and the money was paid over.

There isn't anything in the release, unless Mr. Seeley knows something there that I don't know, which in any way relates to the circumstances not being referred to in other litigation, or which seals the facts upon which the dispute was founded.

The facts are relevant to the issues in this case. When one gets a release, one gets released from certain claims. Those claims involved in this release were money claims, and they were released, as the witness said, by the signatures on this document and by the payment of what he called some $50,000.

Now, beyond that, the release does not speak, your Honor. And I submit its existence or nonexistence is totally irrelevant to the use of the facts which underlay the dispute, to the extent that those facts are relevant to the lawsuit.

[741]

The Court: If I understand Mr. Seeley's argument, he doesn't question what you say. What he is

asking to be stricken was the statement by this witness that there was misrepresentation by this defendant in the negotiations leading up to the creation and construction—if there was construction—of the center at Pueblo.

Right or wrong?

Mr. Seeley: Right.

The Court: Why should this jury be permitted to even consider anything that went on in '60 or '62, because it has all been settled. The consideration was approximately $50,000. Is that your argument?

Mr. Seeley: Yes. And then, after that, I can't see what in the world it has to do with the charge that in later years Brunswick tried to monopolize the bowling center business.

Mr. Hoffmann: Your Honor, Mr. Seeley introduced this release in this lawsuit. He referred to it in his opening statement. He apparently is going to rely on it in his defense. And all I am saying is that there isn't a thing that was released between the parties that has anything to do with proving issues in this lawsuit. If there

[742]

were misrepresentations in Pueblo, if centers were induced to overbuild in Pueblo, that is a fact which can or cannot be relevant to the case. That depends upon your Honor's ruling as to the main issues in the case. But that fact is not made irrelevant by force of the presence of the release. The release only shows—goes to whether or not Mr. Lieblich could collect money from—

The Court: What about the testimony previous to the introduction into evidence of that release, that there was misrepresentation? I think this is the crux of your argument.

Mr. Seeley: Yes.

Mr. Hoffmann: Your Honor, maybe I haven't made myself as clear as I should. What I am saying to you is that whether or not the release exists—assume, for the moment, no release—if there were no release, the question as to misrepresentation, as to overbuilding in Pueblo, is a question which goes to the central issues of the case. Either it is relevant to those issues or it is not.

The Court: As to misrepresentation during that period, why is that relevant to any issue in this case?

[743]

Mr. Hoffmann: Because we have shown that there was overbuilding in Pueblo through Brunswick's desire to move its equipment out to the bowling centers in that period. And the result was that they were hurt—all of the operators were hurt in that area, and as a result of that Brunswick, until 1965, was able to pick up Belmont center.

Our damages in Pueblo are damages which we say result from Brunswick's activities not only in picking up Belmont in '65, but its other activities, which we say restrain the trade of the competitors in that area.

We don't claim damages—if it weren't for the release, we won't claim damages for an earlier date than the release. We don't claim damages for an earlier date, but we do claim damages—

The Court: From '62 on.

Mr. Hoffmann: —subsequent to the release itself.

If you pull out the misrepresentation, it seems to me those issues relating to it, then you are pulling out what I believe is part of the main case, and not part of some side dispute that was settled by the release.

And, if your Honor please, at the very least

[744]

I would ask you to hold your decision until all the evidence is in. He is making a motion simply based on the release in the middle of the plaintiff's case.

We have more evidence, and we will put on Kenny concerning Pueblo. We have more evidence going in resulting from—different witnesses—relating to all the centers.

To isolate the release at this point in time seems to me serves no good purpose and may foreclose us from a valuable thread in this tapestry of antitrust damages.

The Court: Anything else?

Mr. Seeley: Only that I don't think this should be confused with the issue of building. Maybe Brunswick did or did not sell too many machines in Pueblo. But I think this question of the alleged misrepresentation can be totally disconnected from that.

The Court: My ruling is as follows: I think this jury is entitled to know at this stage of the proceedings the totality of the circumstances leading up to the opening and this construction of Pueblo, whether or not there is a misrepresentation, the execution of the release, and then what

[745]

followed.

I overrule your objection.

Mr. Hoffmann: Thank you, your Honor.

(Court and counsel withdrew from side bar.)

Mr. Hoffmann: Will the reporter read the last question and answer.

(Record read.)

[746]

(Counsel returned from side bar, and the following proceedings were had within the hearing and presence of the jury:)

Mr. Hoffmann: Your Honor, can we ask the Reporter to read the last question and answer from before the side bar conference?

The Court: Yes.

(The following questions and answers were read by the Court Reporter:)

"Question: Are you making any claim in this present law suit with respect to the subject matter of that dispute which was settled by the release?

"Answer: No, sir.

"Question: You are not claiming any money for that subject?

"Answer: No, sir."

Q. Now, Mr. Lieblich, in connection with Pueblo, what is the claim for damages?

Pueblo is a plaintiff here, is it not?

A. Yes.

Q. What is that claim?

A. A figure between $965,000 and $1,100,000.

[747]

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Q. Mr. Lieblich, your bowling center in Pueblo you claim in this action has been injured; is that right?

A. Yes.

Q. What is the basis for your claim; what is the injury which you say results in damages?

A. Yes. The basis for the claim is first the discriminatory treatment that Brunswick afforded to Belmont Lanes from September 1963 until April of 1965,

[748]

and then Brunswick's opening—not opening, Brunswick then taking over Belmont Lanes and operating it directly competitively to our center in Pueblo.

The Court: When?

The Witness: From April 1965 right to the present, sir. They are still operating it.

Q. Do you have any way of calculating the injury done to you during the period of time in which you say you were injured through discrimination or something of that sort?

Is that what you just said?

A. Yes, I do.

Q. What is your basis for calculation?

A. Well, it is my general knowledge and experience in the bowling business as to what happens when a bowling center shuts down.

If Belmont Lanes had been closed down by Brunswick on September 1, 1963, a certain amount of bowling revenues that Belmont is still receiving would have come into our center.

I can elaborate on that.

• • •

[779]

By Mr. Hoffmann:

Q. Mr. Lieblich, I would like to show you Plaintiff's Exhibit 47 in evidence. Can you find an entry there for Belmont Lanes? I believe it is on the second page?

A. Yes, sir; on page 4, Center No. 218 is Belmont Lanes in Pueblo, Colorado.

Q. What does that line show? You testified about it, of course, when the exhibit was put into evidence.

A. Yes.

Q. But, briefly, what does it show, sir?

A. It shows that in 1965, while Brunswick was operating Belmont Lanes, it lost $25,789. In 1966 it lost $4,241. In 1967 it had a profit of $1,264. In 1968 it lost $20,075. In 1969 it lost $21,820. In 1970 it lost $20,213. In 1971 it had a profit of $6,328. And in 1972 it had a profit of $18,253.

Q. Now, sir, we have in evidence Plaintiff's Exhibit 8. You are going to have to look at that.

A. Yes.

[780]

Q. What does Plaintiff's Exhibit 8 purport to show?

A. The profit or loss of Pueblo Bowl-O-Mat during each of the years of its operation from 1961 through 1972.

Mr. Hoffmann: Your Honor, I would like to show an enlargement of Plaintiff's Exhibit 8 on our board here. Plaintiff's Exhibit 8 is an exhibit in evidence.

The Court: Yes.

(Plaintiff's Exhibit 8 exposed on board.)

Q. Mr. Lieblich, would you be good enough to state what Plaintiff's Exhibit 8 shows here?

A. Yes. It is the profit or loss of Pueblo Bowl-O-Mat —excuse me. Not profit, it is the losses sustained by Pueblo Bowl-O-Mat in each year of its operation from 1961 through 1972.

Q. And is that loss reflected in the last line on the exhibit?

A. Yes, sir; it is, in the parentheses. Parentheses means a loss.

Q. And is it a fact that in no year was there any operating income, is that what the last line also means?

A. That's right, sir. It lost money every year of its operations right through 1972.

[781]

Mr. Hoffmann: Will you kindly mark as Plaintiff's Exhibit 52 for identification a sheet titled Net Income or Loss of Four Plaintiff Companies.

(Exhibit P-52 marked for identification.)

Q. Mr. Lieblich, looking at Plaintiff's 51 for identification, can you tell us what it is?

A. Yes. This is a summary from four exhibits already in evidence.

Q. Pardon me. I am so sorry. It's Plaintiff's 52 for identification. I am sorry to interrupt you. Will you start your answer over again, please?

The Court: Referring to Exhibit 52, Mr. Hoffmann was asking what it is.

The Witness: Yes, sir. I had begun the answer.

The Court: Read it, please.

(Incomplete answer read.)

A. (Continuing.)—including P-8, of the profits or losses sustained by our subsidiary plaintiff companies—Holiday Bowl-O-Mat, Paradise Bowl-O-Mat, Paramus Bowl-O-Mat and Pueblo Bowl-O-Mat—from 1961 right through the present.

Q. Looking in the column entitled "Pueblo" there is a double line after 1963, is that right?

A. Yes.

[782]

Q. What does that line indicate?

A. That's when the losses that we claim now in this lawsuit commenced in Pueblo.

Q. In other words, as to the previous years above that you are making no claim, is that your testimony?

A. That's right.

The Court: What years are they?

The Witness: 1961, 1962 and 1963, sir. We make no claim for damages in those years.

The Court: All right.

Mr. Seeley: Side bar, please.

The Court: Yes.

[783]

(Whereupon the following proceedings were had at side bar, outside the hearing of the jury:)

Mr. Seeley: It now appears that the plaintiff is claiming damages not only for the period during which BCO-operated houses competed with its houses—

The Court: Say that again. Repeat it.

(Record read.)

Mr. Seeley: —but also for periods prior to 1965 when BCO, or Brunswick, operated no bowling centers, and when the claimed cause of damage is the fact that Brunswick, as a distributor and manufacturer of bowling equipment, either sold bowling equipment which enabled someone else to go into business in these places, or, having previously sold it, failed to foreclose on it and thus allowed those people to stay in business.

The basis of our objection is that there is no legal theory on which it can be charged that Brunswick monopolized the bowling center business at times when it was not even in that business.

The Court: Before we go any further, is the Court right in assuming that—I am now referring to P-52—the lines under Holiday '64, the lines under Paradise 1962, the lines under the item in

[784]

Paramus in 1964—he has already testified the lines under Pueblo 1963—no claim for damages in those years?

Mr. Hoffmann: Above those, yes.

The Court: No claim for damages for those years.

Mr. Seeley: Add one more—

Mr. Hoffmann: It is also true, however, as Mr. Seeley suggests, that when we come to this line (indicating)—

The Court: 1964. 1965?

Mr. Hoffmann: Yes. This includes the year 1964.

The Court: That's right. Excuse me. 1964, as far as Holiday is concerned, and Paradise.

Mr. Hoffmann: Yes. I'm sorry. I was thinking of Pueblo.

In respect of Pueblo, there is $40,967 in this year '64. And unless my memory has done me in, I believe that Belmont was not until '65.

The Court: Acquisition did not take place until 1965.

Mr. Seeley: April 1965.

The Court: That is what you are objecting to.

Mr. Seeley: I am objecting to everything

[785]

before then.

Mr. Hoffmann: That is the area, then, it seems to me, that has to do with—Mr. Seeley, I trust we agree—this $40,967 for that year, 1964, is that right?

Mr. Seeley: Among other things.

Mr. Hoffmann: In respect to Pueblo.

Mr. Seeley: Yes.

Mr. Hoffmann: I submit, with great respect, that this argument suggests another aspect of the argument which took place at the side bar earlier.

Mr. Seeley: I'm not arguing; making an objection.

Mr. Hoffmann: Then I see no reason to go further.

The Court: He is asking that a continual objection be reserved on the record.

Mr. Seeley: I would like to amplify my objection a little bit. Paradise is in Puerto Rico. Brunswick has never been, or never tried to be in the bowling center business in Puerto Rico. And I submit that it is a legal impossibility for a company to monopolize the bowling center business in a place where it has never been in that business.

Mr. Hoffmann: Your Honor, I think we are really arguing objections at the wrong time. And

[786]

I will make myself as concise as possible.

First, I submit, as to the Pueblo figure, that has already been disposed of by your Honor's prior ruling earlier today at side bar.

As to the matter of San Juan, Paradise, the pleading makes it very plain, and the testimony thus far makes it very plain that the basis for our claim is favoritism which was displayed——

The Court: Extension of credit, et cetera.

Mr. Hoffmann: —extension of credit which was given to Star, our competitor, and withheld from us, and that this was part of an exercise of Brunswick's manipulative fianancial power.

It was not only true, by the way, of Paradise. We had some testimony describing Fort Lauderdale yesterday.

The integrated position of Brunswick, as both a supplier of the necessary equipment for the centers and the financier who extends credit, or withholds credit as it sees fit, enables it to control the presence or absence of competition in the market.

The San Juan story is one in which Brunswick never actually took over Star, but nonetheless we have made it part of our case, because over all the

[787]

years we lost money through this monopoly integrated supplier competitor denying us credit and keeping alive this center, which was ultimately described by Mr. Lieblich in his testimony as being a center in a most filthy—I think was his word—condition. And as to this we say—well, this is essentially a part of our theory, that it isn't actually necessary for Brunswick to have its presence with both feet on the ground there.

Its presence was felt through what it gave in credit.

The Court: All right. Your objection will be noted, Mr. Seeley.

Mr. Seeley: And they will stand.

The Court: Yes.

(The Court and counsel withdrew from side bar.)

Mr. Hoffmann: May we have the reporter read the last question and answer, please?

The Court: Yes.

(Record read.)

[788]

(Counsel returned from side bar, and the following proceedings were had within the hearing and presence of the jury:)

(Record read.)

Q. Now, would you be good enough to look——

A. Sir?

Q. Would you be good enough to look, Mr. Lieblich, at the other columns.

There are double lines in those columns?

A. Yes.

Q. Going from left to right, after 1964 on Holiday——

A. Yes.

Q. A double line under the figure there for 38,499.

What is the meaning of the double line there?

A. Our damages, our claimed damages for Holiday Bowl-O-Mat commenced the year following the double lines. Dutchess Lanes was taken over and was operated by Brunswick Corporation.

Q. And in the next column, under Paradise, 1962, there is a double line after the entry for that year.

And the meaning of that double line?

[789]

A. Our damages—our claimed damages for Paradise Bowl-O-Mat commenced as of September 1, 1962.

Q. And in Paramus there is a double line after 1964; is that right?

A. Yes.

Q. And the meaning of that?

A. That's intended to be the starting point of damages when Brunswick began to operate several centers, Fair Lawn Lanes and Interstate Lanes in Ramsey.

Q. And the figures given above the double lines that you have just testified about are not claimed as damages; is that right?

A. No, sir.

Q. Now, if you go back to Holiday, there are double lines in the bottom of the page, after 1969?

A. Yes.

Q. What is the meaning of that?

A. Because that's the year when our damages in our judgment terminated, because that's when Dutchess Lanes was shut down by Brunswick. We don't claim damages for Holiday after August 31, 1969.

Q. And then double lines under the entry for 1970 in Paradise?

A. Yes.

Q. San Juan?

[790]

A. Yes.

Q. What is the meaning of that?

A. We don't claim damages in Paradise after September 1, 1970——

Q. And in Paramus and Pueblo there are no double lines on the bottom; is that right?

A. Yes.

Mr. Hoffmann: I now offer 52 in evidence.

Mr. Seeley: Objection on the grounds stated.

The Court: Into evidence, over the objection of Mr. Seeley, P-52 into evidence.

(Exhibit P-52 received and marked in evidence.)

Mr. Hoffmann: Your Honor, may I distribute it? There will just be a brief inquiry.

The Court: Yes.

Mr. Hoffmann: Thank you.

Q. Mr. Lieblich, addressing yourself to the last column, Pueblo——

A. Yes.

Q. —you have indicated according to your testimony the time period in which you claim damages for Pueblo; is that right?

A. Yes.

[791]

Q. And where does that start again?

A. August 1, 1963.

Q. Why that date?

A. We had signed a release to Brunswick through July 31, 1973.

The Court: '63.

The Witness: '63, excuse me.

Q. And it includes, does it not, the year 1964?

A. Yes, it does.

Q. And the entry for 1964 is what?

A. We lost in that year, in Pueblo, $40,967.

Q. When, if you know, when did Brunswick acquire Belmont?

A. In April 1965.

Q. Your damages, then, as a claim then, do not start with the acquisition of Belmont; is that right?

A. No, sir, it is a year and a half prior to that.

Q. For what reasons are you claiming damages for that year and a half prior to the Belmont acquisition?

A. Because of the discrimination given to Belmont Lanes in that they paid virtually nothing at all to Brunswick all during that period of time.

The total sum they paid was $2,300 in the three-year period through 1965.

[792]

Q. When you say, "paid," you mean paid to Brunswick; is that what you mean?

A. Yes, against their equipment obligations.

Q. Do you know from your memory what Pueblo Bowl-O-Mat paid during that period of time?

A. I can ascertain it. Not from memory—it was very significant payments.

Of course, ultimately the total debt was paid in full.

Q. And that total debt was what?

A. $500,000.

Q. Your figures after they go, after the point in time when Brunswick acquired Belmont, what is the reason for your claim of damage following that acquisition?

A. Well, Brunswick was keeping alive the center which we think should not be in business—should not have been.

Q. Do you have any way of computing what it would have meant to you if in April of 1965 the center called Belmont in Pueblo, Colorado, had closed down?

A. Yes.

Q. Can you tell us what that way is, that method?

A. Yes. Pueblo, Colorado, the community of Pueblo,

[793]

is a single bowling market.

There is in that community only five centers. There is our center, with its 40 lanes; there is the Belmont center with 24 lanes; there is Bowlero with its 32 lanes; Park Lanes with its 10 lanes; and there is Payne's Lanes with its 12 lanes.

Now, people are going to continue to bowl in Pueblo, Colorado, so that if Belmont were to have been shut down something would have happened to all of the bowling income that was being received by Belmont.

Now, I think that through my knowledge of the market area, having been to the other centers, knowing facilities that they had to offer, knowing the facilities that we have to offer in our center, I think I can fairly say that if Belmont had closed down, two thirds of all of the bowling income in Belmont would have come in to our center.

The choice of bowlers was very, very limited. Park Lanes with its 10 lanes was an old center downtown.

True, I said the other day, when I was there last month, they had modernized it, but it still doesn't make it by any sense a modern center.

There is no parking. I have to walk almost a block to visit the center.

And it wasn't during the evening when big play

[794]

was in existence.

Knowing the present schedule, I don't think that they could take too many additional leagues there.

Now, Payne's Lanes with its 12 lanes is certainly a very unattractive center.

The bowlers who have been in Belmont are accustomed to a very fine, first class bowling center. I don't

think they'd be happy to bowl in Payne's Lanes or in Park Lanes, as I have said.

The third center which would share some business with us would be Bowlero.

Now, Bowlero, although a nicer center than either Payne's Lanes or Park Lanes, has many limitations.

It has its—it is downstairs in a shopping center.

There are some very fine downstairs shopping center locations. We feel ours in Paramus is a first-class one.

But nonetheless, the one in Pueblo, Bowlero, is not an attractive center. It has many, many columns.

The snack bar is built very disadvantageously, if I can use that word, with respect to the bowling.

It is a very cramped and very crowded facility.

They have a nice cocktail lounge, but I don't think people who come there to bowl are going to come

[795]

there because they have a nice cocktail lounge. They are going to come there because the bowling facilities are attractive to them.

I realize also if Belmont was to close, some of the bowlers just wouldn't bowl. I recognize that as a possibility, but taking all those factors into consideration it would be my opinion that approximately two-thirds of the bowling down in Belmont would come into our center.

[796]

The Court: You testified as to Park Lanes, Payne's and Bowlero, you testified there were five lanes?

The Witness: Yes.

The Court: Oh, and yours and Belmont?

The Witness: Yes.

Your Honor, I say that I think two-thirds of the bowling revenues at Belmont would have come to our center all during these years.

Now, I have in front of me the Brunswick figures on their operation of Belmont Lanes for the year that just ended. And during the year that ended on December 31, 1972, just three months ago, their total bowling revenues came to $132,000. That was the total—I'm not including shoe rentals, I'm not including their pro shop or the cocktail lounge, just the pure bowling itself.

$131,988 of bowling revenue, so I will round it out to $132,000.

It is, therefore, my judgment that if Belmont were to close or had to close, now, it is a matter of judgment so I can't say specifically, but if Belmont were to close, our Pueblo Bowl-O-Mat would increase its bowling revenues in an amount between $90,000 and $100,000 each year.

[797]

Q. Can you from your experience, Mr. Lieblich, tell us when a bowling center closes down, do its patrons normally continue to bowl, patronize other centers?

A. Yes.

Q. Has your calculations which you have just given us made any allowance for possible loss of bowlers who would cease bowling altogether?

A. Yes.

Q. In what way?

A. Well, of the $132,000, I think that maybe $10,000 of it would stop bowling.

I think some bowlers would stop bowling because, although it is only 15 minutes away from Belmont to our

center, perhaps they live right next to it and they just don't want to drive for 15 minutes. These are possibilities.

Perhaps some of the bowlers would want to bowl Thursday night at 6:30, and they couldn't find that time.

So it is these factors that I have taken into consideration when I say that we—some of the bowlers would stop bowling.

Q. You have taken off something from the top for that; is that right?

[798]

A. Yes.

Q. What was it you took off?

A. I'd say about $10,000.

Q. To put that another way around, are you suggesting that it is a little less than 10 percent that would give up bowling because the center closed down?

A. Yes, I think that's—that's a fair statement, yes.

Q. Now, Mr. Lieblich, can you from your memory total or from any information you have in front of you, total the number of lanes that could survive—I'm sorry, the number of lanes that existed in Pueblo after the point in time, April 1965, when you say that Belmont should have closed down?

A. Including Belmont and our center and Bowlero and Payne's Lanes and Park Lanes, that would be a total of 118 lanes.

Q. Now, you are including within the figure the Belmont figure?

A. Yes, 24 lanes.

Q. Did you subtract 24—did you have 118 as your grand total?

A. Yes.

Q. So you'd have left 94 lanes; is that right?

A. Yes.

[799]

Q. Are you looking at some piece of paper when you say this?

A. I just put them down to——

Q. I see.

Now, of those 94 lanes which remain, how many again are represented by Pueblo Bowl-O-Mat?

A. 40.

Q. That's somewhat less than half, is it not?

A. Yes.

Q. Now, in relation to the amount of money which you think would flow to Bowl-O-Mat, Pueblo, on a close-down of Belmont, you didn't divide equally the money among the various surviving centers, did you?

A. No. I gave the reasons why I did not.

Q. Those were the reasons given earlier?

A. Yes.

Q. The condition of the lanes; is that primary——

A. Yes. We have in Pueblo, as I said, when I described it, one of the most beautiful bowling centers in the country.

The Court: You're telling this jury in the event Belmont was closed down in 1965, that two out of three bowlers would go to your

[800]

40 lanes even though that is less than half of the available lanes in the City of Pueblo?

The Witness: Yes.

The Court: Based on your judgment?

The Witness: Yes.

• • •

[801]

Q. Now, Mr. Lieblich, just before the luncheon recess, in answer to a question by the Judge, you indicated that two out of three of the bowlers, if the Belmont were to have closed in April '65, would have come to Pueblo Bowl-O-Mat, is that correct?

A. Yes.

Q. On what was that conclusion of yours based?

A. Well, on various factors. Certainly a general knowledge of what happens when a center closes down. And there is a technical aspect involved. I gave certain reasons why I did not think that the bowlers would want to come into Park Lanes or Payne's Lanes, because of their being older centers with very limited parking. So there is a technical reason, too, from a bowling standpoint. Those lanes were ten lanes and twelve lanes.

A good many of the leagues in our center in Pueblo,

[802]

as well as in Belmont Lanes, are what we call more than 12-team leagues. Consequently, if there is a group, if there is a league which has 14 or 16 teams, or however many it may have, if it is more than 10 or 12, even if they wanted to, they couldn't switch to Payne's or Park Lanes, because they couldn't accommodate them.

So that is a technical reason. But it is based generally on my knowledge of what can happen and what has happened in some communities where centers have been shut down.

Q. Coming back to the technical reason, you say that these centers couldn't accommodate them. Why is that so?

A. Well, it was a 14-team league. It means that they need 14 lanes to bowl at the same time. And if Park Lanes only has ten lanes, they just can't accommodate a league that size. That is one of the advantages of having a larger size center, such as we have in Pueblo.

Q. In relation to the other reason, you say that is experience?

A. Yes, sir.

Q. What was that experience on which you found that conclusion?

A. In addition to just a general feeling of the market, we have had the experience in both Puerto Rico and in

[803]

Holiday—Wappingers Falls area—as to what happens when another center shuts down.

Q. Addressing yourself to Holiday, in the Wappingers Falls area, do you have any way of demonstrating to us what that experience was?

A. Yes, sir. When Dutchess Lanes finally shut down in Poughkeepsie, our Holiday Bowl-O-Mat incurred a loss in the year in which Dutchess shut down of $51,000.

During the year that just ended on August 31, our income—instead of a loss at the end of the year, we made $47,871. That is a difference of $98,000 since Dutchess closed. The year that is now under way, which is more than half completed, our figures reflect we will probably make about 60 or 65 thousand dollars this year. So since Dutchess closed down we have witnessed a swing of almost $120,000 in the profits of our Holiday Bowl-O-Mat.

Q. In the Wappingers Falls-Poughkeepsie area, there were other centers surviving the closedown of Dutchess, were there not?

A. Yes.

Q. How many were there?

A. There are still—Mardi-Bob is still there, and Hoe-Bow is still there, Touponce Lane is still there.

[804]

Q. Mr. Lieblich, do you have among your papers in the papers in your lap plaintiff's 9?

A. I am not sure which that is.

Q. That's the Pueblo Bowl-O-Mat exhibit.

The Court: What exhibit is it?

Mr. Hoffmann: 9.

A. Yes.

Q. Coming back to plaintiff's 9, does plaintiff's 9 have anything to do with your calculations of damages for Pueblo?

A. Yes, it is a basis for the calculation of the damages to the extent that the bottom shows that for each additional $1,000 of bowling revenue, net income would increase by $1109.

Q. That's the figure down here (indicating)?

A. Yes.

Q. And is that a figure which reflects the other activities of the center about which you earlier testified in this case?

A. Yes.

Q. These items here near the bottom of the chart?

A. Shoe rental, snack bar, the bar, the pro shop and the machine and miscellaneous revenues.

Q. Now, to demonstrate your claim for damages,

[805]

how did you use that bottom line figure of $1109?

A. Well, that means that for every additional $1,000 bowling revenue that would come into our center, the

center would make not that $1,000, but $1109, since we would also be receiving from these bowlers additional profits from shoe rentals, snack bar, bar, pro shop, cocktail lounge and machine and miscellaneous income.

Q. And is that included in your calculation for damages?

A. Yes.

Q. And what, again, do you have to go by to indicate the amount of revenue against which you would add $109?

A. Well, my judgment is that in Pueblo with Belmont Lanes shut down we would bring into our center between 90 to $100,000 of just bowling revenue.

Q. Is that for the reasons that you have already given today?

A. Yes.

Q. Anything more?

A. No, sir.

Mr. Hoffmann: Miss Costello, would you be kind enough to mark as plaintiff's 53 for identification a one-page document which is entitled,

[806]

"Damages to Four of Plaintiff's Centers."

For referencing, Holiday, Paradise, Paramus and Pueblo.

(Exhibit P-53 marked for identification.)

Q. Mr. Lieblich, P-53, do you have that?

A. Yes.

Q. What is it?

A. It is a listing of the damages we claim to four of the ten plaintiff companies, Holiday Bowl-O-Mat, Paradise Bowl-O-Mat, Paramus Bowl-O-Mat and Pueblo Bowl-O-Mat.

Q. And addressing yourself to the line or section which refers to Pueblo, will you tell us how that was prepared?

A. Yes.

The first item down is additional annual bowling revenue. And I have put down the figure I have just testified to, that if Belmont were shut down, between 90 to $100,000 of additional bowling revenue would come into our Pueblo—

Q. Since it is not yet in evidence, please don't refer to the precise amounts, but tell us the structure.

There is a figure given under, "Additional Annual Bowling Revenues for Pueblo"?

[807]

A. Yes.

Q. What was the method used to apply that figure?

A. The testimony I have just given as to how much bowling revenue I thought would come into Pueblo if Belmont were shut down.

Q. And then, the next line, the heading, "Net Income per Thousand Bowling Revenue."

A. Yes.

Q. What did you do?

A. I multiplied whatever figure is down there by $1109, since each additional $1,000 of bowling revenues would give us $1109 of income.

Q. That is to accommodate the extra revenue that you describe on Exhibit 9 in evidence?

A. Yes.

Q. Now, then you have a matter of simple arithmetic; is that right?

A. Yes.

Multiplying 1109 by the figures that I have down in the first column, is a summary—is a total then in the third column.

Q. Then your next column reflects the total number of years, does it not?

A. Yes, it does, number of years in which we claim

[808]

damages to that plaintiff subsidiary.

Q. What is the basis for that entry?

A. Well, the testimony that I have given.

Q. Would it be the testimony found in connection with Exhibit 52?

A. Yes. It runs right through—

The Court: That's in evidence. He can't look at that.

Mr. Hoffmann: Sorry.

The Witness: Yes, it runs right through April 1 of 1973, which is next week.

[809]

Q. Then you have a total, do you not, under damages, at the end?

A. Yes.

Q. What does that reflect, the process used?

A. That reflects the amount that I thought would come into Pueblo if Belmont were shut down times 1109.

That's a total, multiplied by the number of years that Brunswick has been damaging our plaintiff company.

Q. Now, without going over the details again, would the same—I mean at this time—would the same method that you have just described in relation to Pueblo also apply to the other three centers found on this summary?

A. Yes. The first column is my judgment of the additional revenues that would come into those centers multiplied again by the figure on the exhibits, the net income per thousand dollars per year, multiplied by the number of years that Brunswick was damaging that plaintiff.

Q. And these find their support, do they not, in the testimony given in relation to 52 and the other exhibits?

A. Yes.

• • •

[812]

Q. Mr. Lieblich, you have in your hands Plaintiff's

[813]

53?

A. Yes, I do.

Q. Would you be good enough now—

A. I can't hear you, sir.

Q. Would you be good enough to look at the top line, that's Holiday Bowl-O-Mat, is it not?

A. Yes.

Q. Now, again, without giving us the precise amount, would you tell us the basis for your entry concerning the additional annual bowling revenues for Holiday?

A. Yes. Well, in Holiday, based not only on my general knowledge of what should happen when a bowling center closes down, but the actual experience that we had reflected in Holiday since Dutchess closed down, I determined that I thought was appropriate additional bowling revenues that have come in to us since Dutchess did close, because Dutchess closed.

Q. Those are the sources for your entry as to the additional annual bowling revenues for Holiday?

A. Yes.

Q. And then for the net income per 1,000 bowling revenue?

A. That's from one of the exhibits, Mr. Hoffmann.

Q. Referring to this, without turning them over,

[814]

the one that applies the side income, bowling to shoe rental, snack bar, bar, pro shop, mach. and misc., which my colleague informs me, if I may say so, is Exhibit 11 in evidence——

The Court: Tell the jury what you mean by "mach." and "misc."

Mr. Hoffmann: Machinery and miscellaneous, mach. and misc.

[815]

Q. And then you did the arithmetic, is that not right?

A. Yes, in the same manner that it was done in Pueblo.

Q. That would give you a per year figure, is that it?

A. Yes, sir.

Q. Then the next column is number of years. Addressing yourself only to Holiday, that span of years, is that to be found on P-52 in evidence?

A. Yes, it is. That's the period of time that Dutchess was being operated by Brunswick. I ran it to the end of our fiscal year, since Dutchess closed down. So it was very late in the year, the bowling season was over, in any event.

Q. And with your other testimony in respect of Holiday, as found in connection with 52 apply here as well?

A. Yes, it does.

Q. And then the final column is damages, is it not?

A. Yes, it is.

Q. And is that just a matter of doing the arithmetic, involving the numbers that elsewhere appear on the line?

[816]

A. Yes, the same type of arithmetic which was done in Pueblo.

• • •

[817]

Q. And then the Paramus Bowl-O-Mat.

A. Yes.

Q. The first column, additional annual bowling revenue.

A. Yes. That figure is my judgment as to the additional revenues that would come into our Paramus center if one or several of the Brunswick centers

[818]

competing with us, such as Lodi Lanes, Tenpin on the Mall and Fair Lawn Lanes—were to be shut down.

Q. And the net income per thousand dollars bowling revenues?

A. That $1,140 figure is from an exhibit whose number I don't know.

Q. Exhibit 15?

(Exhibit 15 shown on board.)

A. Yes, sir; that $1,140 figure is on this intended exhibit.

Q. And then the arithmetic is done, according to your testimony, is that correct?

A. Yes, the third column is just arithmetic.

Q. And that gives you a per year figure, is that right?

A. Yes, it gives a range of damages within that year, per year.

Q. And the next column, the number of years?

A. That's the number of years that we claim that Paramus Bowl-O-Mat has been damaged by Brunwick's operation of competitive centers. They are still operating it, so we brought it right through to date.

Q. Is that based on your testimony as given in connection with plaintiff's Exhibit 52?

A. Yes, sir.

[819]

Q. Then, finally, the damages column.

A. That is just arithmetic.

Q. Just arithmetic of the entries that are elsewhere on the line, is that your testimony?

A. Yes, sir.

[820]

Mr. Hoffmann: Your Honor, I now offer the exhibit in its entirety.

The Court: 53, over the objection of defendant's counsel, into evidence.

The Court: In arriving at your projection of damages, in your opinion, in the calculating of Pueblo, one of your criteria was your experience in Holiday, Wappingers Falls?

The Witness: Yes, sir.

The Court: Also Puerto Rico?

The Witness: Yes, sir; that's a factor. Even without that, sir, I would come up with essentially the same numbers.

The Court: All right.

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[821]

Q. Now, Mr. Lieblich, coming back once more to Pueblo Bowl-O-Mat, that's the bottom, just before the summaries down to date.

A. Yes, sir.

Q. The figure is given for additional annual bowling revenue of 90 to 100 thousand dollars. Will you explain how you arrived at those particular figures?

A. Yes. Knowing that in the years just ended the Belmont Lanes enjoyed $132,000 of bowling income, the question then is what would happen to that $132,000 were Belmont out of business? And I have given the various reasons why I thought that the great bulk of that business would have to wind up in our Pueblo Bowl-O-Mat, for the reasons I explained about Park Lanes being only ten lanes, Payne's being only 12 lanes, Bowlero, although having 32 lanes, not being a first-class center, such as ours, my general feeling was that we would wind up with between 90 to 100 thousand dollars of additional bowling revenues were Belmont to be out of business.

Q. You could have picked other numbers, couldn't you; why not 5 to 200 thousand dollars?

A. Well, 200,000 would have been much too high and, in my judgment, 50 would have been much, much too low.

[822]

Q. For reasons given in your testimony today?

A. Yes.

Q. Now, you applied a multiple of $1,109 here, is that right?

A. Yes.

Q. Is this just multiplication?

A. Yes. If you multiply 90,000 by 1,109 that would be per year $99,810. If you multiply $100,000 by $1,109 that would be $110,900. So the range of damages per year should be between $99,810 and $110,900.

Q. And once again, that $1,109, is that a number that just comes out of the air somewhere; where did you get that?

A. Sir, that comes from one of the exhibits that is in evidence.

Q. I suggest that it is Plaintiff's 9. Do you have that in front of you?

A. Yes, it is 9.

Q. And that is what was designed to reflect shoe rental, snack bar, bar, and so on, that we have seen on other exhibits, as well, as that right?

A. That is correct.

Q. Having done that, you came out with the per year conclusions here.

A. Yse, sir; $99,810 to $110,900.

[823]

Q. And then what do you do here, on the number of years?

A. Well, the number of years which it is our contention that Brunswick has damaged us by discriminatory practices, and keeping Belmont open for a total period of nine and two-thirds years—they are still operating Belmont, to our damage.

Q. Now, sir, what is this final entry, figure of damages for Pueblo Bowl-O-Mat?

A. Well, if you multiply $99,810 by 9⅔ years, that would be——

Q. Pardon me. That's the 8/1/63 to——

A. Yes. Under that is 9⅔ years. If you multiply $99,810 by 9⅔ years it is a total of $964,830. If you multiply $110,000 by 9⅔ years——

Q. Excuse me, sir. You meant $110,900.

A. Yes. Multiply $110,900 by 9⅔ years, the total damages would be $1,073,030, a range of damages, then, between $964,830 to $1,072,030.

Q. Now, Mr. Lieblich, addressing yourself now to Holiday Bowl-O-Mat.

A. Yes.

Q. The top entry. Well, let me start this way. Holiday Bowl-O-Mat is a plaintiff in this proceeding, is it not?

[824]

A. Yes, it is.

Q. And you are the president of that company, are you?

A. I am, sir.

Q. And that is true of all of these companies, isn't that so, separate companies reflected in that chart?

A. Yes, Mr. Hoffmann.

Q. Now, sir, I ask you to tell us what happened on or about 12-10-65.

A. Brunswick took away Mrs. Levine's center, called Dutchess Lanes, in Poughkeepsie, and began to operate it themselves.

Q. What sort of a center was Mrs. Levine's?

A. Well, I think I described it yesterday or the day before. It had 26 lanes. It was in a free-standing building, but certainly was not as attractive as our center, nor as attractive as the Brunswick center in Belmont, Colorado, for example. It had a small snack bar, a very small cocktail lounge. I don't remember if it was carpeted or not. It was cramped in. The machine area in the back was very,

very crowded. It just wasn't up to our center in appearance.

Q. And can you tell us if you have any information about the kind of business that was being done

[825]

in Dutchess prior to its being taken over?

A. I think back in 1968 or '69, when they shut it down, it was doing about $105,000 a year in bowling revenue.

Q. Do you have any information concerning the annual revenue of Dutchess Lanes?

A. Yes. I may have been a little bit high in the 105. I think I have the documents here. (Producing papers.) Yes, I was a little high. They did $92,000 the year that ended in December of 1969.

Q. Is this a circumstance that in some way enters into your calculations as to damage?

A. Yes, plus the fact that our actual experience in the improvement of our revenue since they did shut down.

Q. And that actual experience since the shutdown, where is that reflected?

A. It is reflected in several places, sir. There is an exhibit—the number I don't know offhand—but it shows the bowling revenues in Holiday every year.

Q. That's Plaintiff's Exhibit 12 in evidence.

A. And in 1969 the total bowling revenues of our Holiday center was $141,000. Then Dutchess shut down. Last year, the year ended August 31, 1972, we had gone up by $85,000 in our bowling revenues. We did $226,000 last year. And the year now under way, over half done

[826]

now, shows that we will do considerably more than $226,000 this year.

Q. You give for Holiday this span on Plaintiff's 53, $60,000 to $75,000 additional annual bowling revenue.

A. Yes.

Q. Can you tell us the basis for that?

A. Well, I tried to be a little more conservative than the actual experience that we have reflected. Our own bowling revenues since Dutchess shut down, including the year now under way, will show an improvement of almost $100,000 of just bowling revenues. In trying to be more on the conservative side I put down between 60 to 75 thousand dollars for Holiday resulting from the shutdown of Dutchess Lanes.

[827]

Q. That's from your own record; is that what you're saying?

A. Yes.

Q. What is that record again?

A. Exhibit—I forget the number, you just told me—it is a record of Holiday's performance over the——

Q. Plaintiff's 11?

A. Yes.

Q. Now, Mr. Lieblich, you used this formula here; is that correct?

A. Yes, $1328 reflects the net income for each additional $1,000 of bowling revenues.

Q. What you are concerned with really is $328?

A. Yes.

Q. What does that $328 reflect?

A. That's the additional profit that we would receive from the snack bar, the bar, the pro shop and machine and miscellaneous revenues, and shoe rental.

Q. All of which you have testified about before in this proceeding?

A. Yes.

Q. Now, here again, you have your number of years indicated; is that right?

[828]

A. Yes.

Q. Please explain them to us carefully. It starts 12/10/65.

A. That's when Dutchess Lanes opened up.

Q. You are not claiming for anything that happened before that time?

A. No. When I say, "opened up," I stated that improperly.

That's the time that Brunswick took over Dutchess Lanes from Mrs. Levine and began operating it for themselves.

Q. And then it terminates 8/31/69?

A. Yes.

Q. What happened then, again?

A. Well, Brunswick finally shut down Dutchess Lanes in the very, very late Spring, maybe early Summer, of 1969.

Since our bowling period was essentially over, and since almost 80 percent of our revenues for the year were already received at that time, I calculated it through the end of the fiscal year, August 31, 1969, totalled then three and three-quarter years.

Q. That's just a matter of figuring out the number of months here and you come up with three and three-quarters; is that right?

[829]

A. Yes.

Q. Your final damages?

A. Multiplication.

Q. Well, it has a span.

A. Yes. If you multiply 16,000 by 1328, the figure is 79,680.

If you multiply 75,000 by $1328, that's 99,600.

If now you multiply 79,680 by three and three-quarters years, that would be total damages $298,800.

If you multiplied the higher range of $99,600 by three and three-quarters years, that would be total damages of $373,500, for a range of 298,800 to $373,500.

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[835]

Q. Now, dropping down to Paramus Bowl-O-Mat, the heading "Additional annual bowling revenues," again you

[836]

have the figure of 120 to 140 thousand dollars for Paramus.

How were they computed?

A. This is our judgment as to what would happen with all of the bowling revenues that are now being enjoyed by several of the Brunswick centers that surround our Paramus operation.

Q. What centers are those?

A. Lodi Lanes, 40 lanes in Lodi.

Q. Is that a Brunswick-owned center?

A. Yes, one of the BCOD centers.

There is Ten Pins on the Mall, which is in Paramus on Route 4 just a half mile from our center.

Then there is Fair Lawn Lanes, which has 32 lanes in Fair Lawn, which is just a few miles from our center.

Last year Lodi Lanes bowling revenues, $190,000.

Ten Pins on the Mall, which over the years has been our most absolute competitor, they are just down the road, their revenues were $171,000.

Fair Lawn Lanes with its 32 lanes had bowling revenues in the year just ended of $255,000.

Now, I don't suggest, sir, that all of this volume could come into our center in Paramus. Some of it, of course, would go to the other centers in the area.

Some of these bowlers would surely stop bowling if

[837]

they had to drive in heavy metropolitan traffic an extra 15 or 20 minutes.

But knowing the market, knowing particularly the effect on our own revenues in Paramus when Ten Pins opened a half a mile away, it is my judgment that if one or two or three of these centers would close down, our Paramus Bowl-O-Mat would improve in bowling between 120,000 and 140,000 a year.

Q. Now, you say this is based on something more than guess or speculation?

A. Well, it is my judgment, my experience, and awareness also——

[838]

Q. What are you holding in your hand?

A. These are the Brunswick figures that they gave you on subpoena, Mr. Hoffmann, showing the revenues and profit and loss of Fair Lawn Lanes, of Ten-pin on the Mall, and of Lodi Lanes.

Q. So from those you were able to derive a figure which would represent what those Brunswick-owned centers made or realized; is that correct?

A. Yes.

Q. Then there exists in this area certain centers which are not Brunswick centers, and which is not your centers; isn't that so?

A. Yes.

Q. That you testified about the other day?

A. Yes.

Q. Can you just offhand tell us what are those centers?

A. Well, certainly Bowler City, Hackensack, would get some of the business, Frank Esposito, who is very, very crowded now, would get some of the business, Martone's in East Paterson would get some of the business.

Club 300 up on the way up towards Ramsey would get some of the business.

Q. And in computing what you feel that Paramus

[839]

Bowl-O-Mat center would get or the Treadway center would get, did you make allowance for the fact that these other centers that you just described would get some of the business?

A. Oh, yes. If you add together 254,000, if I may do that myself here—Fair Lawn Lanes had $255,000, Tenpin on the Mall had 172—I have rounded out these figures, Mr. Hoffmann—and Lodi had 190,000. That's $616,000 of total bowling—I'm not saying, obviously, we are not going to have that, I think our share would be between 120 and 120,000—it might be higher, but I think that's certainly—excuse me, 120,000 to 140,000.

Q. That is as against what?

A. 616,000.

Q. And how many lanes did Paramus Bowl-O-Mat have?

A. We have 36 lanes.

Q. And again, the total number of lanes, if you are able to compute it, can you?

Can you compute the total number of lanes for the centers which would have enjoyed increased business ac-

cording to your testimony, in the event that the Brunswick-operated centers had not been operating?

[840]

A. Well, let's see if I can remember them all. Bowler City in Hackensack has 50 lanes.

Martone's in East Paterson has, I think, 24 to 32.

Club 300 has 40.

Frank Esposito has 38.

Fair Lawn, Route 4 Bowl, has 18.

Eclipse Bowl, I think, has 24.

About 202 lanes in addition to our 36 would be sharing in the 616,000 bowling revenues in the three Brunswick centers.

The Court: Consisting of how many lanes of Brunswick?

The Witness: 32, 32 at Fair Lawn, sir, 40 at Interstate in Ramsey and 36 in Tenpin on the Mall.

108.

[841]

Q. Now, there are 202 lanes according to your count, not including the Paramus Bowl-O-Mat?

A. Yes, about that, sir, if I remember them correctly.

Q. And then Bowl-O-Mat Paramus was how many again?

A. 36.

Q. So without Brunswick-operated lanes there are a total of 238, is that right, approximately?

A. Yes, right.

Q. And as against the Brunswick centers, who have 108; is that your testimony?

A. Yes.

Q. And in relationship then to the 238, can you just offhand give us a percentage which reflects the 36 lanes of Bowl-O-Mat, Paramus?

A. Well, 238 into 36.

About 15 per cent—16 per cent.

Q. Now, sir, applying the arithmetic you have just done, you take a span of 120 to 140,000 as the division of the 600 or more thousand represented by the Brunswick centers, is that right?

And that's what you have given to Paramus Bowl-O-Mat in the event that those centers were not operated by Brunswick?

A. Yes.

[842]

Q. And ceased to exist; is that your testimony?

A. Yes.

Q. Now may we go on then from there to the figure we see again, $1,140?

A. Yes. The $1140 is from Exhibit—it is our exhibit on Paramus.

Q. 15, if I may supply the number.

A. Thank you.

Q. And that's the amount of net income that we would receive for each thousand dollars of bowling revenues, so if you multiply then the $1140 by $120,000, it would be $136,800.

If you multiply $1140 by $140,000, that would be $159,600, or a range per year of $136,800 to $159,600.

Q. And then the number of years?

A. That's eight years.

Q. Quickly again, how did you measure—the parameters of the beginning and the end?

A. It was in March 1965 that Brunswick first began to operate Fair Lawn Lanes and Interstate Lanes in Ramsey, and since they are still operating those, plus Lodi, plus Ten Pins on the Mall, we have eight, eight years.

Q. Then your final damage calculation over here, what is that; is that a process of multiplication?

A. That's multiplication.

[843]

If you multiply 136,800 by eight years, that's a total of 1,084,400.

If you multiply 159,600 by eight years, that's a total of $1,276,800, for a range of $1,094,400 to $1,276,800.

Q. What is this on the bottom entitled "Summary"?

A. That's a summary of the damages, the first is Holiday Bowl-O-Mat, and the lower range is from the top line for Holiday, the lower range in my judgment would be $298,800.

The higher range from the top of the chart is $373,500.

The next entry, Paradise Bowl-O-Mat, the lower range, the Paradise lower range is $997,600, which comes from the chart above, and the higher range is $1,197,120.

Next entry is Paramus Bowl-O-Mat.

The lower range from the chart is $1,094,400, and the higher range is $1,276,800.

The last entry is for Pueblo Bowl-O-Mat.

There the lower range is, from the chart, $864,830. The higher range is $1,072,030.

Adding them all, all four together, the lower range of the damages we claim would be for these four centers, $3,355,630, and the higher range, $3,919,450.

(Short recess.)

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